
TEXAS REGISTER

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*Jami Edwards
11th Grade*

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
<http://www.state.tx.us/>

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Executive Order

RP 66

Relating to the Texas Youth Commission.

WHEREAS, on March 2, 2007, the Legislative Audit Committee met pursuant to Texas Government Code §2104.021 to consider allegations regarding gross fiscal mismanagement at the Texas Youth Commission ("TYC"); and

WHEREAS, the Committee found that gross fiscal mismanagement exists at TYC; and

WHEREAS, pursuant to Texas Government Code Chapter 2104 the Committee, recommended the appointment of a conservator for TYC or that TYC be directed to enter into a rehabilitation plan pursuant to Texas Government Code §2104.0215;

NOW, THEREFORE, I, Rick Perry, Governor of the State of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

Special Master. A Special Master is hereby appointed to investigate all matters relating to gross fiscal mismanagement of TYC. The Special Master shall report directly to the Governor. The Board of TYC (the "Board") shall, as necessary, grant authority to the Special Master to investigate all related matters, and direct all employees to cooperate with the Special Master. The Special Master will work with the executive director to develop and implement the Rehabilitation Plan.

Rehabilitation Plan. TYC shall enter into a rehabilitation plan and engage the services of an independent management consulting team, approved by the Governor, and by the presiding officer and assistant presiding officer of the legislative audit committee. The Rehabilitation

Plan shall be developed and submitted to the Governor's Office and the Legislative Audit Committee for review by March 16, 2007. The Rehabilitation plan shall ensure that TYC complies with state fiscal management policies. The Rehabilitation Plan shall remain in place until the Legislative Audit Committee certifies to me that the condition of gross fiscal mismanagement in TYC no longer exists.

Other State Agency Support. The assistance of the Office of the Attorney General is requested and the Texas Department of Public Safety and the Texas Department of Criminal Justice are directed to provide assistance and support as requested.

Report. At all times throughout the investigation, the Special Master shall keep the Governor fully informed. Not later than the 60 days from the date of this Executive Order, a comprehensive report shall be delivered to the Governor's office and to the Legislative Audit Committee. The report shall include a description of the measures taken to ensure that TYC complies with state fiscal management policies.

Cooperation. All affected agencies and other public entities shall cooperate fully with the Special Master during the implementation of and execution of this order.

This executive order supersedes all previous orders and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 2nd day of March, 2007.

Rick Perry, Governor

TRD-200700979

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THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Request for Opinions

RQ-0572-GA

Requestor:

The Honorable M. Rex Emerson

Kerr County Attorney

County Courthouse, Suite BA-103

700 Main Street

Kerrville, Texas 78028

Re: Possible conflict between section 1701.357, Occupations Code, which relates to the carrying of firearms by a retired peace officer, and the federal Law Enforcement Officers Safety Act of 2004 (RQ-0572-GA)

Briefs requested by April 9, 2007

RQ-0573-GA

Requestor:

Mr. C. Tom Clowe, Jr., Chair

Texas Lottery Commission

P.O. Box 16630

Austin, Texas 78761-6630

Re: Eligibility for a manufacturer's or distributor's license under the Bingo Enabling Act, chapter 2001, Occupations Code (RQ-0573-GA)

Briefs requested by April 12, 2007

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200701009

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: March 14, 2007



Opinions

Opinion No. GA-0528

The Honorable Eddie Lucio, Jr.

Chair, Committee on International Relations and Trade

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether a seawall funded from assessments levied pursuant to Local Government Code, chapter 372, subchapter A or B, may be built on privately-owned land (RQ-0528-GA)

SUMMARY

Texas Constitution article III, section 52(a) requires a city that builds a seawall on privately-owned land to maintain sufficient control over it to ensure that the public purpose is accomplished and to protect the public's interest in it. To carry out this duty, a city must have an appropriate interest in the land on which a seawall funded from assessments levied pursuant to Local Government Code, chapter 372, subchapter A or B will be located.

Opinion No. GA-0529

The Honorable Jesusa Sanchez-Vera

Jim Wells County Attorney

Post Office Drawer 2080

Alice, Texas 78333

Re: Whether Texas Constitution article III, section 52-a and Local Government Code section 380.001 authorize a city to make a loan to a private developer to fund a private housing project (RQ-0535-GA)

SUMMARY

Texas Constitution article III, section 52-a and Local Government Code section 380.001 authorize a city to make a loan for a housing project if the project will promote economic development within the meaning of these provisions.

Opinion No. GA-0530

The Honorable Rodney Ellis

Chair, Committee on Government Organization

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether article XVI, section 40(b) of the Texas Constitution applies in certain circumstances (RQ-0530-GA)

S U M M A R Y

Whether a particular state employee is a schoolteacher for purposes of article XVI, section 40 of the Texas Constitution depends upon whether the employee is employed to instruct students in a school setting, which may include an athletic facility, as a result of which participants receive credit toward fulfilling their curriculum requirements.

A home-rule municipality may adopt reasonable ordinances delimiting expenses for which the municipality may reimburse city council members consistently with article XVI, section 40(b)(1). To the extent that reimbursement for various expenses constitutes a gift or grant of public funds for purely private purposes, it would contravene article III, section 52 of the Texas Constitution.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200701008

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: March 14, 2007



PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~Square brackets and strikethrough~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 255. FINANCE

1 TAC §255.4

The Commission on State Emergency Communications (CSEC) proposes an amendment to §255.4, concerning the definitions of a local exchange access line or equivalent local exchange access line.

The proposed amendments would further ensure parity amongst service providers in applying the rule and determining the appropriate amount of 9-1-1 emergency service fees to collect and remit; and eliminate an effective date that is no longer applicable.

Specifically, the proposed amendments would add subsection (c) to provide a methodology for calculating the emergency service fees to be collected and remitted when the actual number of local exchange access lines or equivalent local exchange access lines cannot be readily determined due to the nature of the transmission facilities; and eliminate the effective date for disallowing the use of the federal subscriber line charge as an alternative local exchange access line definition and including service providers discounted lines in the local exchange access line definition.

Paul Mallett, CSEC executive director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Mallett has also determined that for each year of the first five years the rule is in effect the public benefit expected as a result of enforcing the rule will be an improvement in the accuracy and parity of service providers collecting and remitting the wireline 9-1-1 emergency service fee. Mr. Mallett has also determined that there may be marginal increases in costs for some service providers are no anticipated economic costs to persons who are required to comply with the rule and there is no anticipated local employment or local economy impact. Mr. Mallett has determined that, although no historical data is available, there appears to be no direct effect on small or micro-businesses.

Comments on the amendment may be submitted in writing to Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942. Comments may also be submitted electronically to "info@csec.state.tx.us". For comments submitted electronically, please include "§255.4 amendments" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposal in the

Texas Register. Comments should be organized in a manner consistent with the organization of the rule.

The amendments are proposed under Texas Health and Safety Code, Chapter 771, §§771.051, 771.063, 771.071, 771.073, and 771.077, which authorize CSEC to define local exchange access line or equivalent local exchange access line for the purpose of 9-1-1 emergency service fees. The amendments are proposed in accordance with the process for rulemaking as prescribed by Texas Government Code, Chapter 2001, Subchapter B.

No other statutes, articles, or codes are affected by the proposed amendment.

§255.4. Definition of a Local Exchange Access Line or an Equivalent Local Exchange Access Line.

(a) (No change.)

(b) The terms "local exchange access line" or "equivalent local exchange access line" do not include coin-operated public telephone equipment, public telephone equipment operated by card reader, commercial mobile radio service that provides access to a paging or other one-way signaling service, a communication channel suitable only for data transmission, a line from a telecommunications service provider to an Internet service provider for the Internet service provider's data modem lines used only to provide its Internet access service and that are not capable of transmitting voice messages, a wireless roaming service or other nonvocal commercial mobile radio service, a private telecommunications system, or a wireless telecommunications connection subject to Texas Health and Safety Code, §771.0711. ~~[The effective date for (1) the deletion of the federal subscriber line charge as an alternative definition of local exchange access line and equivalent local exchange access line; and (2) the inclusion of a service provider's discounted lines shall be January 1, 2007.]~~

(c) A service provider using one or more facilities with multiple calling capabilities to serve a single end user customer location that cannot determine the actual number of local exchange access lines or equivalent local exchange access lines being served by such facilities (e.g., Enterprise Voice over Internet Protocol applications), shall assess the 9-1-1 emergency service fee as follows:
Figure: 1 TAC §255.4(c)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2007.

TRD-200700945

Paul Mallett

Executive Director

Commission on State Emergency Communications

Earliest possible date of adoption: April 22, 2007

For further information, please call: (512) 305-6930

◆ ◆ ◆
TITLE 10. COMMUNITY DEVELOPMENT

**PART 1. TEXAS DEPARTMENT OF
HOUSING AND COMMUNITY AFFAIRS**

CHAPTER 1. ADMINISTRATION

**SUBCHAPTER A. GENERAL POLICIES AND
PROCEDURES**

10 TAC §§1.11, 1.13, 1.14

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Part 1, Chapter 1, Subchapter A, §1.11 concerning development reporting; §1.13 concerning applicant compliance with laws prohibiting discrimination; and §1.14 concerning tenant selection. The Department has determined, as part of a rule review, that these sections more effectively belong in 10 TAC Chapter 60, Compliance Rules.

Michael Gerber, Executive Director, has determined that, for the first five-year period the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Mr. Gerber has also has determined that, for each year of the first five years the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal will be more logically organized and readily available rules for developers, management organizations, and tenants. There is no additional anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small or micro businesses.

Comments on the proposed repeal may be submitted in writing to Kevin Hamby, General Counsel, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941, or by e-mail to kevin.hamby@tdhca.state.tx.us. To be considered, a written comment must be received on or before the 21st day after the date the proposed repeal is published in the *Texas Register*.

This repeal will affect 10 TAC Chapter 60. The provisions of the repealed sections will be incorporated in Chapter 60.

The repeal is proposed under Texas Government Code, Chapter 2306.

The statutory provisions (as currently in effect) affected by the proposed repeal are contained in Texas Administrative Code, Chapter 1.

§1.11. Fair Housing Sponsor Report.

§1.13. Applicant Compliance with State and Federal laws Prohibiting Discrimination.

§1.14 Housing Sponsor: Tenant and Management Selection.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2007.

TRD-200700934

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: April 22, 2007

For further information, please call: (512) 475-4595

◆ ◆ ◆
TITLE 22. EXAMINING BOARDS

**PART 1. TEXAS BOARD OF
ARCHITECTURAL EXAMINERS**

CHAPTER 1. ARCHITECTS

SUBCHAPTER C. EXAMINATION

22 TAC §1.52

The Texas Board of Architectural Examiners proposes an amendment to §1.52, concerning a scholarship awarded to eligible architectural candidates to help defray the costs of the architectural registration examination pursuant to §1051.653, Texas Occupations Code Annotated. The reason for the amendment is to limit the scholarship to those who are more clearly established as Texas residents and require candidates to apply for the scholarship within a reasonable time after passing the examination. The amendment limits the scholarship to candidates who have passed the architectural registration examination within 12 months prior to applying for the scholarship. There are also technical amendments made to update a statutory cross-reference and maintain consistent references to the board. Section 1.52 limits eligibility for the scholarship to those who have resided in Texas for 12 months. As amended, eligibility would be restricted to those who have resided in Texas for 18 months. As amended, the effect of the rule would be to ensure a greater likelihood that scholarship recipients actually reside in Texas. The time limit on applying for the award would be to ensure the scholarship will more likely be awarded to those who have an immediate financial need for it.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no impact on local government. There will be no significant fiscal impact on state government.

Ms. Hendricks has also determined that for each year of the first five-years the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: the revenue raised from Texas architects will more likely remain in Texas paid to Texas candidates and the scholarship will more likely be awarded to those who have a more pressing financial need. The rule will have no impact on small business. There will be no change in the cost to persons required to comply with the section.

Comments may be submitted to Cathy L. Hendricks, RID/ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1051.653 of Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with authority to adopt rules to administer and enforce its enabling legislation and to administer the award of scholarships, respectively.

The proposed amended rule will not affect other statutes.

§1.52. Financial Assistance to ARE Candidates.

(a) The fund established by the 76th Texas Legislature to provide financial assistance to Texas ARE Candidates shall be administered by the Board or, if authorized by law, by an independent scholarship administrator approved by the Board. As mandated by §1051.653 of the Texas Occupations Code [Section 7A of the Architects' Registration Law], the Architect Registration Examination Financial Assistance Fund (AREFAF) shall be funded by a mandatory fee from all Texas registered Architects.

(b) A one-time maximum award of \$500 shall be awarded to each approved applicant. Each scholarship recipient shall meet the following criteria:

(1) Each scholarship recipient shall be a Texas resident who has resided in Texas for at least 18 [twelve (12)] months immediately preceding the date the recipient submitted his or her application for the AREFAF award;

(2) Each scholarship recipient shall be a Candidate in good standing or shall be an Architect who completed the ARE during the 12-month period immediately preceding the date of application for the AREFAF award [after September 1, 1999];

(3) - (4) (No change.)

(c) The Board shall not award an AREFAF scholarship to any of the following persons:

(1) (No change.)

(2) any employee of the Board [TBAE];

(3) - (5) (No change.)

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2007.

TRD-200700932

Cathy L. Hendricks, RID/ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 22, 2007

For further information, please call: (512) 305-8544



SUBCHAPTER K. PRACTICE; ARCHITECT REQUIRED

22 TAC §1.212

The Texas Board of Architectural Examiners proposes an amendment to §1.212 for Title 22, Chapter 1, Subchapter K, pertaining to the services of a prime design professional in the design of certain publicly owned buildings. Section 1051.703(a), Texas Occupations Code Annotated, requires an architect to prepare the architectural plans and specifications for certain buildings owned by the state or a political subdivision of the state. Section 1051.703(b), Texas Occupations Code Annotated, reads "this section does not prohibit an owner of a building from choosing an architect or engineer as the prime design professional for a building construction, alteration, or addition project." The reason for the rule is to clarify that a person

selected to serve as a prime design professional is not thereby permitted to practice outside the scope of his or her licensed profession in rendering architectural services on the projects listed in §1051.703(a). The effect expected if the proposed rule is adopted is to ensure that architects and engineers do not attempt practice each other's profession as the result of being selected as the prime design professional by a client.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal impact on state or local government resulting from the amended rule.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: publicly owned buildings will more likely be designed by those who are practicing within the profession for which they have been licensed thus ensuring that the buildings will be safer and more efficient. The rule will have no impact on small business. There will be no change in the cost to persons required to comply with the section.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337.

The new rule is proposed pursuant to §1051.202 and §1051.208, of Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the standards of the practice of architecture and prohibitions upon the unlicensed practice of architecture and which require architectural plans and specifications for certain publicly owned buildings to be prepared by an architect. The proposed amended rule does not affect other statutes.

§1.212. Publicly Owned Buildings.

(a) - (b) (No change.)

(c) For purposes of §1051.703(b), of the Texas Occupations Code, designation as the "prime design professional" does not expand, limit, or otherwise alter the scope of a design professional's practice nor does it allow a design professional to fulfill the requirements of §1051.703(a) of the Texas Occupations Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2007.

TRD-200700928

Cathy L. Hendricks, RID/ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 22, 2007

For further information, please call: (512) 305-8544



PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.2

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §75.2, relating to proper diligence and efficient practice of chiropractic, to specify that patient abandonment is an example of a lack of due diligence. In response to an inquiry from the public, the Board has decided to make this amendment so that doctors of chiropractic, patients, and the public are clearly on notice that a doctor of chiropractic cannot simply close their practice without reasonable cause without providing notice to their patients and for the orderly transfer of the patient's records.

In drafting this rule, the Board looked to the Texas Medical Board's rule at 22 TAC §165.5, relating to transfer and disposal of medical records, and State Board of Dental Examiners' rule at 22 TAC §108.5, relating to patient abandonment.

Glenn Parker, Executive Director, has determined that for the first five-year period this amendment is in effect there will be no additional cost to state or local governments as a result of enforcing or administering the new section.

Mr. Parker also determined that for each year of the first five-year period the amendment is in effect the public benefit will be clearer standards and accountability for patient abandonment. Mr. Parker has determined that there will be no economic costs to persons who are required to comply with the amendment. There will be no effect to small or micro businesses.

Comments on the proposed amendment may be submitted to Glenn Parker, Executive Director, Texas State Board of Chiropractic Examiners, 333 Guadalupe St. Tower III Suite 825, Austin, TX 78701, (512) 305-6705 fax, no later than 30 days from the date that this amendment is published in the *Texas Register*.

The amendment is proposed under the Texas Occupations Code, §201.152, relating to rules, which authorizes the Board to adopt rules necessary to regulate the practice of chiropractic.

No other statutes, articles, or codes are affected by the proposed rule.

§75.2. Proper Diligence and Efficient Practice of Chiropractic.

(a) A lack of proper diligence in the practice of chiropractic or the gross inefficient practice of chiropractic when applied to a licensee or chiropractic facility includes but is not limited to the following:

(1) failing to conform to the minimal acceptable standards of practice of chiropractic, regardless of whether or not actual injury to any person was sustained, including, but not limited to:

(A) failing to assess and evaluate a patient's status;

(B) performing or attempting to perform procedures in which the chiropractor is untrained by education or experience;

(C) delegating chiropractic functions or responsibilities to an individual lacking the ability or knowledge to perform the function or responsibility in question; [øø]

(D) causing, permitting, or allowing physical injury to a patient or impairment of the dignity or the safety of a patient or;

(E) abandoning patients without reasonable cause and without giving a patient adequate notice and the opportunity to obtain the services of another chiropractor and without providing for the orderly transfer of a patient's records.

(2) failing to provide direct supervision of students or other persons as required by §80.1 of this title (relating to Delegation of Authority) or §78.1 of this title (relating to Registration of Chiropractic Radiologic Technologists).

(b) Conduct enumerated in subsection (a) of this section may also constitute, under appropriate circumstances, violations of other provisions of the Chiropractic Act or other board rules, including but not limited to those which prohibit grossly unprofessional conduct or dishonorable conduct.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 6, 2007.

TRD-200700868

Glenn Parker

Executive Director

Texas Board of Chiropractic Examiners

Earliest possible date of adoption: April 22, 2007

For further information, please call: (512) 305-6901

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**PART 16. TEXAS BOARD OF
PHYSICAL THERAPY EXAMINERS**

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.5

The Texas Board of Physical Therapy Examiners proposes amendments to §329.5, concerning Licensing Procedures for Foreign-trained Applicants. The amendment corrects a statement regarding the waiver of the TOEFL test requirements for certain applicants by adding a category that was inadvertently excluded. The TOEFL test requirement is also waived for graduates of foreign entry-level physical therapy programs accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) at time of graduation.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the greater availability of therapists to treat the people of Texas. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendment may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by this amendment.

§329.5. Licensing Procedures for Foreign-Trained Applicants.

(a) The provisions of §329.1 of this title (relating to General Licensing Procedure) apply to foreign-trained applicants.

(b) If required by §343 of the U.S. Illegal Immigration Reform and Immigrant Responsibility Act, the foreign-trained applicant must present a prescreening certificate issued by a board-approved prescreening entity. The board will establish by policy a list of board-approved prescreening entities, which will be made available to foreign-trained applicants on request.

(c) The foreign-trained applicant's educational credentials and qualifications will be evaluated by a board-approved credentialing entity in accordance with the requirements of subsection (f) of this section. The board will establish by policy a list of approved credentialing entities. In the event that the credentialer does not adhere to the guidelines of subsection (f) of this section, the Board may override the evaluation. An evaluation by a board-approved education credentialing entity is valid for the purpose of licensing in this state for not more than two years after the date of issuance of the evaluation.

(d) After arrival in the United States, the applicant must submit a United States residential address and pay all remaining fees. Only after the applicant has arrived in the United States will the board approve registration for the national exam.

(e) Designated representative letter.

(1) An applicant may designate a person as a representative by providing in writing to the board the name, telephone number, and address of the person and by stating in the letter that the person will be the designated representative for the applicant.

(2) This letter must be notarized by a notary of the country in which the applicant resides and sent directly to the board. A copy should be sent to the representative by the applicant.

(3) A designated representative may obtain confidential information regarding the application.

(4) A designated representative of an applicant will remain so until the applicant receives his permanent license or until the board is notified in writing by the applicant that the designated representative has been eliminated or replaced. An applicant may have only one designated representative at any time.

(5) The designated representative is not required by the board to have power of attorney for the applicant. A person who does have power of attorney for an applicant may not submit any document that is required by the board to be signed by the applicant and notarized. Documents submitted by a person with power of attorney for the applicant must be submitted in accordance with all requirements set by the Act and rules regarding these documents. Any falsification of documents required for licensing submitted by a designated representative or a person with power of attorney for the applicant may result in denial of license or other penalties to the applicant.

(f) Guidelines for board-approved education credentialing entities.

(1) The credentialing entity will review all of an applicant's post-secondary professional education credentials earned outside of the United States. The entity will evaluate allowable transfer credit for the 13th year based on recommendations of the National Council on the Evaluation of Educational Credentials or on current published reference materials. The applicant must have completed, with a passing grade of A, B, C, Pass or Credit, 60 semester hours credit or the equivalent in general education courses from an accredited institution of higher learning. This requirement may be met by credits earned at U.S. colleges or universities, by College Level Examination Program (CLEP) credits, or Advanced Placement (AP) according to standards

of the American Council on Education. The number of credits earned by CLEP or AP may not exceed 12 semester credits.

(2) The credentialing entity must attest that the institution attended by the applicant has the recognition of the Ministry of Education or the equivalent in that country.

(3) All foreign-trained applicants must demonstrate the ability to communicate in English by making the minimum score accepted by the board on the TOEFL tests. This requirement is waived for graduates of entry-level physical therapy programs in Australia, Canada (except Quebec), Ireland, New Zealand and the United Kingdom, and for graduates of entry-level programs accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) at time of graduation. For graduates of entry-level physical therapy programs in other foreign countries, the Board may grant an exception to the TOEFL tests if the applicant holds a current license in physical therapy in another state and has been licensed in the U.S. for 10 years prior to application. The Board also may grant an exception to the TOEFL tests to an applicant who submits satisfactory proof that he/she is a citizen or lawful permanent resident of the United States, and has attended four or more years of secondary or post-secondary education in the U.S. Regarding the Paper-based and Computer-based TOEFL tests: If an applicant makes a score of 50 on the TSE, the board will allow the applicant to submit three original, notarized letters of recommendation from individuals who have practical knowledge of the applicant's ability to communicate successfully in spoken English. Individuals who provide this written testimony must be native English speakers, cannot be related by blood or marriage to the applicant, and at least one of the letters must be from a PT licensed to practice in Texas. These letters must be submitted by their authors directly to the board. At the board's discretion, the letters may be considered satisfactory evidence of proficiency in spoken English. Minimum acceptable scores for the TOEFL tests are as follow:

(A) Paper based TOEFL tests (pbt): TOEFL (reading/comprehension) 580; TWE (writing/essay) 5.0; TSE (speaking) 55.

(B) Computer-based TOEFL tests (cbt): TOEFL (reading/comprehension) 237; TWE (writing/essay) 5.0; TSE (speaking) 55.

(C) Internet-based (ibt): Writing 24; Speaking 26; Reading Comprehension 21; Listening Comprehension 18.

(4) The credentialing entity must attest that the applicant is or was licensed or authorized to practice in the country in which the entry-level degree in physical therapy was granted. If there is no licensure or authorization in such country, the applicant must be eligible for unrestricted practice there. The Board may waive this requirement for an applicant who is not licensed in the country of education due to a citizenship requirement of that country.

(A) If the application is by examination, the license or authorization in such country must be in good standing and the licensure current.

(B) If the application is by endorsement, and the applicant has passed the exam according to Texas standards, the license or other authorization must have been in good standing at the time the license or authorization in such country expired.

(5) The credentialing entity adopts the policy of "scaling" as defined by the National Council on the Evaluation of Foreign Educational Credentials, American Association of Collegiate Registrar and Admissions Officers, Washington D.C.; i.e., a year of foreign study is worth no more than a year of American study, regardless of contact hours, or general education is converted to equate to approximately

30-32 United States semester credit hours per year, and professional education to approximately 36 semester credit hours per year.

(6) The credentialing entity must use a method to convert classroom hours to semester units which has a ratio no greater than the following: 15 contact lecture hours = one semester unit/hour; 45 contact laboratory hours = one semester unit/hour. When lecture/lab hours are not delineated on the transcript or syllabi, the evaluator may use an appropriate ratio and indicate the ratio used in the evaluation.

(7) The credentialing entity must list and assign a grade for each course taken by the applicant, by assigning the grade of A, B, C, D, F, Pass, Fail, Credit or No Credit. Those grades assigned by the credentialing entity must be the grades that are converted to the U.S. equivalent, in accordance with the most current version of the National Association for Foreign Student Affairs Handbook on the Placement of Foreign Graduate Students. The credentialing entity must identify and list those courses which would not transfer to the U.S. as a C or above or Pass or Credit in accordance with the most current version of the National Association for Foreign Student Affairs Handbook on the Placement of Foreign Graduate Students. An applicant must earn a grade of A, B, C, or Pass or Credit in any professional physical therapy education courses. An applicant with a grade of D, F, Fail, or no credit appearing for a professional physical therapy education course on his/her evaluation who has not successfully retaken the course with a grade of A, B, C, Pass or Credit is not eligible for licensure in Texas.

(8) The credentialing entity must attest that the applicant has successfully completed an educational program substantially equivalent to U.S. programs accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE) and has earned the equivalent of a minimum of 72 semester hours of professional physical therapy education. The program must be post-secondary, requiring for entry the equivalent of high school graduation in the United States; must consist of at least three years of classroom instruction; and must result in the award of the first academic diploma or degree leading to professional practice in physical therapy. The applicant must have completed courses in each of the following broad areas: basic sciences, clinical science, and physical therapy theory and procedures. The applicant must have also successfully completed United States required equivalent courses/hours in clinical education. The applicant must have successfully completed at least 15 semester credit hours in clinical education (upper division level) but will receive credit for no more than 23 semester hours. If the applicant has completed the required course work in clinical education but the transcript does not reflect the required credit hours then the credentialing entity may use the conversion formula of 60 contact hours per one semester credit.

(9) If the degree awarded is substantially equivalent to a degree in physical therapy as awarded by CAPTE-accredited programs in regionally accredited colleges and universities in the United States, the credentialing entity must use the Coursework Evaluation Tool for Foreign Educated Physical Therapists (Coursework Evaluation Tool), as developed by the Federation of State Boards of Physical Therapy and modified by the Texas board, when evaluating an applicant's credentials. The version of the tool used must correspond at minimum to the year the entry-level degree was awarded. Deficiencies must be identified and must show the subjects and credit hours necessary to satisfy the requirements of the Coursework Evaluation Tool. If the degree received is from a CAPTE-accredited program located outside the U.S., the program is considered equivalent to a domestic CAPTE-accredited physical therapy program, and the applicant is exempt from meeting the requirements of the Coursework Evaluation Tool.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 5, 2007.

TRD-200700862

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: April 22, 2007

For further information, please call: (512) 305-6900



PART 38. TEXAS MIDWIFERY BOARD

CHAPTER 831. MIDWIFERY

The Texas Midwifery Board (board), with the approval of the Executive Commissioner of the Health and Human Services Commission, proposes amendments to §§831.1 - 831.4, 831.7, 831.11 - 831.17, 831.20 - 831.23, 831.31 - 831.37, 831.40, 831.51, 831.52, 831.54, 831.57, 831.58, 831.60, 831.65, 831.70, 831.75, 831.101, 831.111, 831.121, 831.131, 831.141, and 831.161 - 831.173, and new §831.174, concerning the licensing and regulation of midwives.

BACKGROUND AND PURPOSE

The amendments and new rule constitute the agency review of rules required by Government Code, §2001.039. The amendments clarify and update the rules, remove obsolete language, and ensure that the rules are consistent. The rule amendments also complete the implementation of House Bill (HB) 1535, 79th Legislature, Regular Session (2005), Sunset legislation, relating to the continuation and functions of the board; and the licensing and regulation of midwives. The new rule provides procedures consistent with the Administrative Procedure Act for issuance of a default order should a midwife fail to appear at a hearing at the State Office of Administrative Hearings.

SECTION-BY-SECTION SUMMARY

Amendments to §831.1 reflect the new section name.

Amendments to §831.2 reflect the addition of new language relating to standing orders in §831.52.

Amendments to §831.3 update the rules to include that board members may receive notification of meeting dates by e-mail.

Amendments to §831.4 remove unnecessary capitalization.

Amendments to §831.7 add the term "Midwifery Program Director" to ensure consistency with other sections of the rules.

Amendments to §831.11 renumber existing language to make the rules easier to read.

Amendments to §831.12 clarify that fees must be made payable to the department.

Amendments to §831.13 clarify the term for continuing education and list in detail the items already required on the current initial application forms approved by the Board but not previously reflected in rule.

Amendments to §831.13 and §831.14 remove obsolete language and add the National Safety Council to the list of acceptable providers of cardio-pulmonary resuscitation (CPR) training.

Amendments to §831.14 clarify that licenses are issued for a two year term and list in detail the items already required on the

current renewal application forms approved by the Board but not previously reflected in rule.

Amendments to §831.15 clarify that a midwife who reapplies for licensure after failing to complete late renewal must meet the current requirements for an initial license.

Amendments to §831.16 clarify the term for continuing education.

Amendments to §831.17 include the word "also" for clarity.

Amendments to §831.20 include rule language related to failure to submit records or protocols based on the requirement already found in §831.165. The section has been renumbered to reflect the insertion.

Amendments to §831.21 contain a grammatical correction.

Amendments to §831.22 reflect Sunset legislation in the change from "documentation" to "licensure" because midwives now receive a license and not a "letter of documentation."

Amendments to §831.23 correct existing language to specify that the board and not the hearings examiner must issue the final order concerning a disciplinary action.

Amendments to §831.31 specify that a midwife shall serve as vice-chair of the committee and state that all meetings of the committee are open to the public.

Amendments to §831.32 require that a midwifery student enrolled in an approved course must complete the course within a five year period, correct an error to ensure that the number of clinical hours required for graduation matches the national standard (1350 not 1360), and add the National Safety Council to the list of acceptable providers of cardio-pulmonary resuscitation (CPR) training.

Amendments to §831.33 provide additional specifics on what new and renewing basic midwifery education courses will be evaluated on, including how they teach protocol writing, and the types of files reviewed during a site visit. The language also specifies that the Education Committee Chair will appoint the midwife member of the site visit team.

Amendments to §831.34 include a non-substantive change in the placement of "and/or" in a sentence.

Amendments to §831.35 extend the time before a new exam application must be considered by the Education Committee from 60 to 90 days.

Amendments to §831.36 clarify that a complaint may be closed for either insufficient evidence or no violation.

Amendments to §831.37 remove the obsolete word "draft" and correct the name of a board publication.

Amendments to §831.40 include a non-substantive change from "and" to "and/or."

Amendments to §831.51 update internal references and remove obsolete language.

Amendments to §831.52 add new language on standing orders from a physician to emphasize that it is the responsibility of the midwife to ensure that standing orders are legal and current.

Amendments to §831.54 add new language reiterating that the midwife must assess the client on an ongoing basis for any factors which might preclude the client receiving midwifery care.

Amendments to §831.57 clarify that a midwife may initiate a non-emergency termination of care in accordance the requirements of the section for any reason.

Amendments to §831.58 remove the unnecessary repetition of the word "initiate."

Amendments to §831.60 amend and standardize existing wording to specify that all care required by rule must be documented in midwifery records.

Amendments to §831.65 include non-substantive rewording for clarity.

Amendments to §831.70 amend and standardize existing wording to specify that all care required by rule must be documented in midwifery records.

Amendments to §831.75 add new language to require a midwife to recommend to a client that the timing of the first newborn visit to the health care provider who will provide care after the first six weeks of life be pre-arranged in advance, and amend and standardize existing wording to specify that all care required by rule must be documented in midwifery records.

Amendments to §831.101 include a non-substantive clarification by adding the word "recommending."

Amendments to §831.111 reflect the name change from the Texas Department of Health to the Department of State Health Services.

Amendments to §831.121 include a non-substantive clarification from "he/she" to "the midwife."

Amendments to §831.131 include the Sunset Review follow-up requirement that the board include more explicit language in the rules on how the midwife is required to provide notice to the client regarding where to file a complaint.

Amendments to §831.141 reflect the name change from the Texas Department of Health to the Department of State Health Services.

Amendments to §831.161 specify that a midwife shall serve as vice-chair of the committee.

Amendments to §831.162 state that only jurisdictional complaints shall be processed through the complaints process.

Amendments to §831.163 include a clarification that a complaint is "closed" not "dismissed."

Amendments to §831.164 include a clarification from "assigned" to "approved."

Amendments to §831.165 include minor, non-substantive wording corrections from "a" to "the" and from "and" to "and/or."

Amendments to §831.166 state that complaints presented to the committee must be jurisdictional.

Amendments to §831.167 clarify that a complaint may be resolved by a settlement conference and/or by an agreed order.

Amendments to §831.168 specify that the proposal for decision referred to the board is prepared by the Administrative Law Judge (ALJ).

Amendments to §831.169 clarify that a midwife may be required to participate in either basic or continuing midwifery education, and add new language to state that failure to comply with a board order is grounds for further disciplinary action. New language is also added to reflect the existing requirement that the board

suspend a license for failure to pay child support in accordance with the Family Code, and deny renewal for default on a student loan in accordance with the Education Code.

Amendments to §831.170 clarify that a complaint may be closed for either insufficient evidence or no violation.

Amendments to §831.171 renumber existing language to make the rules easier to read.

Amendments to §831.172 add the wording "a licensee" to clarify that the board may also issue a cease and desist order if a licensee is violating the act or the rules.

Amendments to §831.173 reflect Sunset legislation in the change from "documentation" to "licensure."

New §831.174 provides procedures consistent with the Administrative Procedure Act for issuance of a default order should a midwife fail to appear at a hearing at the State Office of Administrative Hearings.

FISCAL NOTE

Kathy Perkins, Manager, Health Care Quality Section, has determined that for each year of the first five-year period that the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that these entities will not be required to alter their business practices to comply with the sections. There is no anticipated economic costs to persons to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the licensing and regulation of midwives.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Yvonne Feinleib, Midwifery Program Director, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-4521 or by e-mail to midwifery@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER A. THE BOARD

22 TAC §§831.1 - 831.4, 831.7

STATUTORY AUTHORITY

The proposed amendments are authorized by the Texas Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Texas Occupations Code, Chapter 203.

The proposed amendments affect the Occupations Code, Chapter 203. Review of the sections implements Government Code, §2001.039.

§831.1. *Introduction.*

(a) (No change.)

(b) Construction. These sections cover definitions; the Midwifery Board; board member training; the petition for the adoption of a rule; license required; fees; initial application; renewal; late renewal; renewal for retired midwives performing charity work; state midwifery roster; grounds for denial of application or disciplinary action; application or renewal with criminal conviction; surrender of license; reissuance of license after revocation, suspension or surrender; education committee; basic midwifery education; education course approval; education course denial or revocation of approval; exam approval, denial, or revocation of approval; complaints concerning education courses and comprehensive exams; jurisprudence examination; continuing education; standards for the practice of midwifery in Texas; definitions; protocols; termination of the midwife-client relationship; transfer of care in an emergency situation; prenatal care; labor and delivery; postpartum care; newborn and infant care; the administration of oxygen; eye prophylaxis; newborn screening; the informed choice and disclosure statement; the provision of support services; complaint review committee; reporting violations and/or complaints; records of complaints; complaint categories; disciplinary action and guidelines; complaint investigation; informal settlement conferences; hearings; disciplinary action; complaint disposition and appeals; refunds; cease and desist order; and emergency suspension; and default orders.

§831.2. *Definitions.*

The following words and terms when used in these sections shall have the following meaning unless the context clearly indicates otherwise:

(1) - (20) (No change.)

(21) Standing delegation orders--Written instructions, orders, rules, regulations or procedures prepared by a physician and designated for a patient population, and delineating under what set of conditions and circumstances actions should be instituted, as described in the rules of the Texas Board of Medical Examiners in Chapter 193 (relating to standing delegation orders) and §831.52 of this title (relating to Inter-professional Care).

§831.3. *Midwifery Board.*

(a) - (c) (No change.)

(d) Meetings.

(1) Frequency. The Midwifery Board shall meet at least semi-annually and at other times when called by the Midwifery Board or the Commissioner. Notice of the time, date, place and purpose of regular meeting shall be provided to the members by mail; by e-mail; or by telephone ~~[or both]~~, at least seven days in advance of each meeting.

(2) - (9) (No change.)

§831.4. *Board Member Training.*

(a) - (b) (No change.)

(c) A person appointed to the Midwifery Board is entitled to reimbursement, as provided by the current general appropriations act [~~General Appropriations Act~~], for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

§831.7. *Petition for the Adoption of a Rule.*

(a) (No change.)

(b) Submission of the petition.

(1) (No change.)

(2) The petition shall be in writing; contain the petitioner's name, address, and organization, if any; and describe the rule and the reason for it; however, if the Midwifery Program Director [~~program coordinator~~] determines that further information is necessary to assist the board in reaching a decision, the Midwifery Program Director [~~program coordinator~~] may require that the petitioner resubmit the petition and that it contain:

(A) - (D) (No change.)

(3) The Midwifery Program Director [~~program coordinator~~] may refuse to accept a petition which does not contain the information in paragraph (2) of this subsection or the information in paragraph (2)(A) - (D) of this subsection if the Midwifery Program Director [~~program coordinator~~] determines that the latter information is necessary.

(4) (No change.)

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (d) of this section, the Midwifery Program Director [~~program coordinator~~] shall submit an accepted petition to the board for its consideration and disposition.

(2) (No change.)

(3) If the board denies the petition, the Midwifery Program Director [~~program coordinator~~] shall give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(4) (No change.)

(d) Subsequent petitions to adopt the same or similar rule. All initial accepted petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsections (b) and (c) of this section. The Midwifery Program Director

[~~program coordinator~~] may refuse to forward to the board for consideration any subsequent petition for the adoption of the same or a similar rule submitted within six months after the date of the initial petition.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER B. LICENSURE

22 TAC §§831.11 - 831.17, 831.20 - 831.23

STATUTORY AUTHORITY

The proposed amendments are authorized by the Texas Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Texas Occupations Code, Chapter 203.

The proposed amendments affect the Occupations Code, Chapter 203. Review of the sections implements Government Code, §2001.039.

§831.11. *License Required.*

(a) (No change.)

(b) A midwife license shall be valid for a renewal period of two years starting March 1, 2006, except for initial licensure. [~~A midwife's initial license shall be valid from the date issued until March 1 of the following renewal period.~~]

(c) A midwife's initial license shall be valid from the date issued until March 1 of the following renewal period.

§831.12. *Fees.*

All fees must [~~should~~] be made payable to the Department of State Health Services and are non-refundable.

(1) - (11) (No change.)

§831.13. *Initial Application.*

(a) Initial licensure. An individual may apply for licensure as a midwife at any time during the year by submitting the following to the Midwifery Program:

(1) a completed licensure application form which shall contain: [3]

(A) specific information regarding personal data, social security number, birth date, other licenses held, and misdemeanor or felony convictions;

(B) the date of the application;

(C) a statement that the applicant has read Occupations Code, Chapter 203 (Act), and these rules and agrees to abide by them;

(D) a statement that the information in the application is truthful and that the applicant understands that providing false and misleading information on items which are material in determining the applicant's qualifications may result in the voiding of the application, or denial or the revocation of any license issued; and

(E) the signature of the applicant which has been dated; and

(F) any other information required by the Board.

(2) (No change.)

(3) proof of current cardiopulmonary resuscitation (CPR) certification for health care providers by the American Heart Association; ~~or~~ equivalent certification for the professional rescuer from the Red Cross; or equivalent certification for healthcare and professional rescuer from the National Safety Council;

(4) - (6) (No change.)

(7) proof of passing the jurisprudence examination approved by the Midwifery Board[; effective September 1, 2006]. The jurisprudence examination must have been taken no more than one year prior to the date of application.

(b) Initial licensure after interim of more than four years. A midwife seeking initial licensure who has not become licensed within four years of completing a basic midwifery education course approved by the Midwifery Board or accredited by MEAC shall in addition provide proof of having completed at least 40 contact hours of approved ~~continuing~~ midwifery continuing education within the year preceding the application, which shall be based upon a review of:

(1) - (2) (No change.)

§831.14. *Renewal.*

License renewal. Licensed midwives must apply for license renewal during the last January of each two-year renewal period. ~~[Licensure expires March 1 of the second or last year of the renewal period.]~~ The Midwifery Program will send renewal applications to licensed midwives during the last December of each renewal period. However, each midwife is solely responsible for compliance with the requirements for license renewal, and nonreceipt of the renewal application mailed by the Midwifery Program shall not constitute an acceptable excuse for failure to comply. A midwife's application for license renewal must include the following:

(1) a completed license renewal application form which shall require the provision of the preferred mailing address and telephone number, and a statement of all misdemeanor and felony offenses for which the licensee has been convicted, along with any other information required by the Board;

(2) (No change.)

(3) proof of current CPR certification for health care providers by the American Heart Association; ~~or~~ equivalent certification for the professional rescuer from the Red Cross; or equivalent certification for healthcare and professional rescuer from the National Safety Council;

(4) - (5) (No change.)

(6) proof of passing the jurisprudence examination approved by the Midwifery Board in the four years preceding renewal[; effective September 1, 2006].

§831.15. *Late Renewal.*

(a) (No change.)

(b) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining an initial license.

§831.16. *Renewal for Retired Midwives Performing Charity Work.*

(a) - (c) (No change.)

(d) For subsequent renewals, a retired midwife who is not practicing midwifery in Texas except for providing voluntary charity care may renew his or her midwifery license by submitting all the items required by §831.14 of this title except for:

(1) five hours of approved midwifery continuing education per year of renewal under this subsection, not ten hours; and

(2) the retired midwife renewal fee, not the regular renewal fee.

(e) - (f) (No change.)

§831.17. *State Midwifery Roster.*

The Midwifery Program shall maintain a roster of all individuals currently licensed to practice midwifery in the state. A copy of the roster shall be provided to each county clerk and local registrar of births on request. The Midwifery Program shall also provide information on new and/or late licensees to individual county clerks and local registrars of births during the course of a year as needed.

§831.20. *Grounds for Denial of Application or Disciplinary Action.*

Grounds for denial of application for licensure or license renewal and for disciplinary action.

(1) The Midwifery Board may deny an application for initial licensure or license renewal and may take disciplinary action against any person based upon proof of the following:

(A) - (J) (No change.)

(K) failure to practice midwifery in a manner consistent with the public health and safety; ~~or~~

(L) failure to submit midwifery records and/or protocols in connection with the investigation of a complaint; or

(M) ~~[(L)]~~ demonstrated lack of personal or professional character in the practice of midwifery.

(2) (No change.)

§831.21. *Application or Renewal with Criminal Conviction.*

Licensure of persons with criminal convictions ~~[conviction]~~.

(1) - (4) (No change.)

§831.22. *Surrender of License.*

(a) A midwife may surrender his or her license prior to its expiration for the current period by mailing the original license certificate and current renewal card ~~[acknowledgment letter]~~ back to the Midwifery Program together with a signed statement of his or her intent to surrender the license ~~[same]~~.

(b) - (c) (No change.)

§831.23. *Reissuance of License after Revocation, Suspension, or Surrender.*

(a) A person whose license to practice midwifery in this state has been revoked or suspended by the Midwifery Board or who has surrendered his or her license after having received notice that the Midwifery Program is investigating a complaint may not apply for reissuance of license until the applicant has complied with all requirements

imposed by the Midwifery Board in connection with the revocation, suspension, or surrender. If the Midwifery Board proposes to deny [~~denies~~] the application for reissuance of license, an applicant may request a hearing in accordance with the provisions of the Administrative Procedure Act (APA), Government Code, Chapter 2001, applicable state and federal statutes, the Rules of Practice and Procedures of the State Office of Administrative Hearings (SOAH) and this chapter. [~~The decision of the hearing examiner shall be final.~~]

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER C. EDUCATION AND EXAMINATION

22 TAC §§831.31 - 831.37, 831.40

STATUTORY AUTHORITY

The proposed amendments are authorized by the Texas Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Texas Occupations Code, Chapter 203.

The proposed amendments affect the Occupations Code, Chapter 203. Review of the sections implements Government Code, §2001.039.

§831.31. *Education Committee.*

(a) The chair of the Midwifery Board shall appoint an education committee for a two year term, with the approval of the Midwifery Board, to consider all issues related to mandatory basic and continuing midwifery education. The Education Committee shall review all applications submitted by the Midwifery Program staff for approval of mandatory basic midwifery education courses or comprehensive exams, as well as complaints concerning approved courses or exams. The Education Committee will consist of members of the Midwifery Board:

(1) two licensed midwives, one of whom shall serve as chair and the other of whom shall serve as vice-chair;

(2) - (3) (No change.)

(b) (No change.)

(c) All [~~Except for informal settlement conferences, all other~~] meetings and proceedings of the Education Committee shall be open to the public.

§831.32. *Basic Midwifery Education.*

(a) (No change.)

(b) Mandatory basic midwifery education shall:

(1) - (5) (No change.)

(6) provide clinical experience/preceptorship of at least one year in duration but no more than five years in duration and equivalent to 1350 [~~1360~~] clinical contact hours which prepares the student to become certified by NARM, including successful completion of at least the following activities:

(A) - (C) (No change.)

(7) (No change.)

(c) Individuals enrolled as students in an approved midwifery course must possess:

(1) (No change.)

(2) a current cardiopulmonary resuscitation (CPR) certificate for health care providers from the American Heart Association [~~or~~] an equivalent CPR certificate for the professional rescuer from the Red Cross; or equivalent certification for healthcare and professional rescuer from the National Safety Council.

§831.33. *Education Course Approval.*

(a) Course approval.

(1) The course supervisor/administrator shall submit an application form and a non-refundable initial midwifery course application fee to the Midwifery Program with the following supporting documentation:

(A) (No change.)

(B) course curriculum with specific content references to:

(i) - (ii) (No change.)

(iii) NARM Skills Assessment Test Specifications;
[and]

(iv) Texas Midwifery Basic Information and Instructor Manual; and [-]

(v) protocol writing, adaptation and revision.

(C) - (E) (No change.)

(2) (No change.)

(3) The Midwifery Program staff and Education Committee chair shall review each course application submitted for approval. If an application for initial approval meets all of the requirements specified in this paragraph, a one-year provisional approval will be granted. An on-site evaluation of the course shall be scheduled. The evaluation shall be conducted by a member of the Midwifery Program staff and a licensed midwife within the provisional year. The midwife member of the evaluation team shall be appointed by the chair of the Education Committee [~~Midwifery Board~~] and shall not be the supervisor, didactic instructor, or preceptor of another basic midwifery education course in the same geographic area. The site visit will include the following:

(A) - (D) (No change.)

(E) a review of student, staff and preceptor files, to include coursework, protocols, and financial records.

(4) - (8) (No change.)

(b) - (d) (No change.)

§831.34. *Education Course Denial or Revocation of Approval.*

(a) (No change.)

(b) Revocation of course approval. The Midwifery Board may revoke the approval of a course after notifying the course supervisor/administrator of its intended action and the opportunity for an appeal, if the Midwifery Board determines that:

(1) - (3) (No change.)

(4) the course supervisor has falsified course registration, attendance, ~~and/or~~ completion and/or other records; or

(5) (No change.)

(c) - (f) (No change.)

§831.35. *Exam Approval, Denial, or Revocation of Approval.* Comprehensive exams.

(1) Comprehensive exam approval.

(A) - (B) (No change.)

(C) The Midwifery Program staff and Education Committee chair shall review each exam application submitted for approval. If an application for approval meets all of the requirements specified in this paragraph, it will be forwarded to the Education Committee within 90 ~~60~~ days.

(D) - (F) (No change.)

(2) - (6) (No change.)

§831.36. *Complaints Concerning Education Courses and Comprehensive Exams.*

(a) - (c) (No change.)

(d) Settlement conference. The Education Committee chair or, in his/her absence, the vice-chair, will preside over and conduct the conference.

(1) (No change.)

(2) Order of presentation. After making the necessary introductory and explanatory remarks, the chair or vice-chair shall state the case number and the nature of the complaint.

(A) (No change.)

(B) Evidence and statements shall be reviewed by the Education Committee and one of the following recommendations made to the Midwifery Board:

(i) close the complaint file due to insufficient evidence or no violation; or

(ii) (No change.)

(C) (No change.)

(e) - (i) (No change.)

§831.37. *Jurisprudence Examination.*

(a) The department shall develop a ~~[draft]~~ jurisprudence examination and present it to the Midwifery Board for approval.

(b) The subject matter covered by the examination shall include the Act, this chapter, and other Texas laws which affect midwifery practice, as described in the current Texas Midwifery Basic Information and Instructor ~~[Instructors]~~ Manual.

(c) - (e) (No change.)

§831.40. *Continuing Education.*

All continuing education taken by midwives for the purpose of obtaining or renewing a midwifery license must be in accordance with this section.

(1) - (3) (No change.)

(4) Course coordinators and instructors.

(A) (No change.)

(B) Course instructors shall have training and/or ~~[and]~~ credentials appropriate for the course material they will teach.

(5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER D. PRACTICE OF MIDWIFERY

22 TAC §§831.51, 831.52, 831.54, 831.57, 831.58, 831.60, 831.65, 831.70, 831.75, 831.101, 831.111, 831.121, 831.131, 831.141

STATUTORY AUTHORITY

The proposed amendments are authorized by the Texas Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Texas Occupations Code, Chapter 203.

The proposed amendments affect the Occupations Code, Chapter 203. Review of the sections implements Government Code, §2001.039.

§831.51. *Standards for the Practice of Midwifery in Texas.*

(a) - (b) (No change.)

(c) Midwifery practice is based upon education in the sciences and upon necessary clinical skills as defined in §831.11 of this title (relating to License Required) ~~[Annual Documentation]~~ and §831.32 ~~[[831.34]~~ of this title (relating to Basic Midwifery Education). The education shall be obtained through apprenticeship or an approved basic midwifery education course.

(d) Midwifery care is provided by qualified practitioners. The midwife:

(1) is regulated by the Texas Midwifery Board ~~[of the Texas Department of Health]~~; and

(2) (No change.)

(e) - (h) (No change.)

§831.52. *Inter-professional Care.*

The following definitions regarding inter-professional care of women within a midwifery model of care apply to this chapter.

(1) - (4) (No change.)

(5) Standing orders from a physician licensed in Texas must be obtained if a midwife provides any prescription medication to a client or her newborn other than oxygen and eye prophylaxis. The orders must be current (renewed annually) and must comply with the rules of the Texas Medical Board. Midwives have the responsibility not to comply with an outdated order.

§831.54. *Policies and Protocols.*

(a) The midwife shall establish, review, update, and adhere to individualized policies and protocols in the practice of midwifery. These protocols shall be consistent with standard midwifery management as described in a standard midwifery textbook or a combination of standard textbooks and references. Any textbook or reference which is also an approved text or reference for a midwifery educational program or school which has been approved by the Texas Midwifery Board shall be considered an acceptable textbook or reference for use in developing a midwife's personal protocols. The midwife shall maintain and update a written record of the textbooks and references upon which she/he has based each protocol and submit that record to the Midwifery Program upon request.

(b) The midwife shall:

(1) - (4) (No change.)

(5) assess the client on an ongoing basis for any factors which might preclude a client from admission into or continuing in midwifery care based on the policies and protocols;

(6) ~~[(5)]~~ review and document review of all policies and protocols at least annually; and

(7) ~~[(6)]~~ modify policies and protocols as needed, and document any changes.

§831.57. *Termination of the Midwife-Client Relationship.*

A midwife shall terminate care of a client only in accordance with this section unless a transfer of care results from an emergency situation.

(1) (No change.)

(2) The midwife may terminate care for any reason by:

(A) - (D) (No change.)

§831.58. *Transfer of Care in An Emergency Situation.*

In an emergency situation, the midwife shall initiate emergency care as indicated by the situation and ~~[initiate]~~ immediate transfer of care in accordance with the protocols of his or her practice by making a reasonable effort to contact the health care professional or institution to whom the client will be transferred and to follow the health care professional's instructions; and continue emergency care as needed while:

(1) - (2) (No change.)

§831.60. *Prenatal Care.*

(a) The midwife shall collect, ~~[and]~~ assess, and document maternal care data through a detailed obstetric, gynecologic, medical, social, and family history and a complete prenatal physical exam and appropriate laboratory testing; develop and implement a plan of care; thereafter evaluate the client's condition on an ongoing basis; and modify the plan of care as necessary. Health education/counseling shall be provided by the midwife as appropriate.

(b) - (d) (No change.)

§831.65. *Labor and Delivery.*

(a) The midwife shall evaluate the client when the midwife arrives for ~~[the]~~ labor and delivery, by obtaining a history, performing a physical exam, and collecting laboratory specimens.

(b) The midwife shall monitor the client's progress in labor ~~[elient after the midwife's arrival for the labor and delivery]~~ by monitoring vital signs, contractions, fetal heart tones, cervical dilation, effacement, station, presentation, membrane status, input/output and subjective status.

(c) - (e) (No change.)

§831.70. *Postpartum Care.*

(a) The midwife shall assess ~~[monitor and advise]~~ the mother during the immediate postpartum period by monitoring vital signs, uterine fundus, bleeding and subjective status for a minimum of two hours after mother's condition is stable.

(b) The midwife shall:

(1) collect, ~~[and]~~ assess and document maternal care data throughout the postpartum period including history, physical exam, laboratory testing;

(2) - (4) (No change.)

(c) - (d) (No change.)

§831.75. *Newborn Care During the First Six Weeks After Birth.*

(a) Prior to delivery, the midwife shall establish a plan with the client for continuing care of the newborn. This plan shall:

(1) include referral or transfer to a health care professional who has current pediatric knowledge; ~~[and]~~

(2) include a recommendation that the client pre-arrange the timing of the first newborn visit with the health care professional; and

(3) ~~[(2)]~~ be documented in the midwifery record.

(b) The midwife shall:

(1) collect, assess and document ~~[evaluate the]~~ newborn care data by monitoring the vital signs, performing a physical exam, and obtaining the laboratory tests necessary for the infant during the postpartum period;

(2) - (3) (No change.)

(c) - (f) (No change.)

§831.101. *Administration of Oxygen.*

(a) Purpose. This section outlines procedures for administration of oxygen by midwives. Whether or not a midwife chooses to administer oxygen to the mother and/or newborn, the midwife remains responsible for assessing the client and/or newborn; recommending referral; and/or recommending transfer or transport of the mother and newborn in compliance with Subchapter D of this chapter (relating to Practice of Midwifery).

(b) - (d) (No change.)

§831.111. *Eye Prophylaxis.*

(a) Each midwife is responsible for seeing that every infant which she or he delivers receives the necessary eye prophylaxis to prevent ophthalmia neonatorum, in accordance with the medications specified by the Department of State Health Services ~~[Texas Department of Health]~~.

(b) (No change.)

§831.121. *Newborn Screening.*

(a) Each midwife who assists at the birth of a child is responsible for seeing that newborn screening tests are performed according to the Health and Safety Code, Chapters 33 and 34, and 25 Texas Administrative Code §§37.51-37.69 (relating to Newborn Screening Program). The midwife may perform the tests or refer for them. If the

midwife performs the tests [she or he does them], then she or he must have been appropriately trained. Each midwife must have one of the following documents on file with the midwifery program in order to be licensed.

(1) - (2) (No change.)

(b) - (c) (No change.)

§831.131. Informed Choice and Disclosure Statement.

As required by the Act, §203.351 (relating to Informed Choice and Disclosure Requirements), each midwife shall disclose in oral and written form to a prospective client the limitations on the skills and practices of the midwife. The written informed choice and disclosure statement which has been approved by the Midwifery Board shall include:

(1) (No change.)

(2) a disclosure statement, which includes the legal requirements of the midwife and prohibited acts as stated in the Act. The disclosure statement may not exceed 500 words and must be in Spanish and English; and must contain:[-]

(3) information on where to file a complaint against a licensed midwife, including the name, mailing address and telephone number for the Texas Midwifery Board.

§831.141. Provision of Support Services.

This provision applies to the [Texas] Department of State Health Services (department), a local health department, a public health district, or a local health unit which is owned, operated, or leased by a political subdivision of the state. The appropriate governmental entity is required to provide clinical and laboratory services to pregnant women and newborns who are clients of midwives as long as the services are required of the midwives by the Act, §203.355 (relating to Support Services). The procedure and requirements for the clinical and laboratory services are as follows.

(1) - (3) (No change.)

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SUBCHAPTER E. COMPLAINT REVIEW

22 TAC §§831.161 - 831.174

STATUTORY AUTHORITY

The proposed amendments and new rule are authorized by the Texas Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Texas Occupations Code, Chapter 203.

The proposed amendments and new rule affect the Occupations Code, Chapter 203. Review of the sections implements Government Code, §2001.039.

§831.161. Complaint Review Committee.

Complaint Review Committee. With the approval of the Midwifery Board, the chair of the Midwifery Board shall appoint a Complaint Review Committee for two-year terms to consider all complaints filed against licensed midwives or unlicensed individuals and to make recommendations to the Midwifery Board.

(1) The Complaint Review Committee shall consist of the following Midwifery Board members:

(A) two licensed midwives, one of whom shall serve as the chair and the other of whom shall serve as vice-chair;

(B) - (C) (No change.)

(2) - (3) (No change.)

§831.162. Reporting Violations and/or Complaints.

Report of a complaint. Any person or agency may contact the Midwifery Program by telephone, in person, or in writing, alleging that a licensed midwife has violated the Act, any provisions of this subchapter, or any other law or rule relating to the practice of midwifery in Texas.

(1) (No change.)

(2) The complaint review process begins when:

(A) - (B) (No change.)

(C) the Midwifery Program confirms that the complaint is jurisdictional;

(D) [~~(C)~~] the Midwifery Program confirms that the complaint alleges acts which took place not more than five years before the receipt of the complaint; and

(E) [~~(D)~~] the Midwifery Program assigns a case number.

(3) (No change.)

§831.163. Records of Complaints.

Records of complaints. The Midwifery Program shall maintain the following information concerning each complaint filed, if applicable:

(1) - (5) (No change.)

(6) basis for recommending closure [~~dismissal~~] of the complaint;

(7) - (8) (No change.)

§831.164. Complaint Categories.

(a) (No change.)

(b) The final complaint category shall be approved [~~assigned~~] by the Complaint Review Committee after completion of the investigation.

§831.165. Disciplinary Action and Guidelines.

(a) The Midwifery Board and the Complaint Review Committee shall consider the following factors when taking or recommending disciplinary action:

(1) - (8) (No change.)

(9) prior determinations by the Midwifery Board that the [a] midwife has violated the Act and/or rules; and

(10) (No change.)

(b) In addition to or in lieu of the penalties and sanctions under §831.169(a) of this title (relating to Disciplinary Action), the following administrative penalties shall be used in recommending disposition of complaints involving the following violations:

(1) - (3) (No change.)

(4) for violations of Subchapter D of this chapter (relating to Practice of Midwifery):

(A) - (B) (No change.)

(C) for a subsequent offense:

(i) an administrative penalty not to exceed \$5,000 per offense, with each day of a continuing violation constituting a separate violation; ~~and/or~~ [and]

(ii) license revocation;

(5) (No change.)

(6) for procuring or renewing a license through fraud:

(A) denial of license; ~~and/or~~ [and]

(B) an administrative penalty not to exceed \$5000 per offense, with each day of a continuing violation constituting a separate violation;

(7) - (8) (No change.)

(c) (No change.)

§831.166. *Complaint Investigation.*

(a) The Midwifery Program Director or director's designee shall:

(1) - (6) (No change.)

(7) present each jurisdictional complaint to the Complaint Review Committee; and

(8) (No change.)

(b) (No change.)

§831.167. *Informal Settlement Conferences.*

The Complaint Review Committee chair shall conduct the conference. If the chair is absent, the vice-chair shall preside.

(1) (No change.)

(2) Order of presentation. After explaining the purpose of the conference and other related matters, the chair or vice-chair shall state the case number and the nature of the complaint.

(A) - (C) (No change.)

(D) Matters not resolved by settlement conference and/or agreed order shall be referred for a hearing.

§831.168. *Hearings.*

(a) - (c) (No change.)

(d) The proposal ~~[All proposals]~~ for decision prepared by the ALJ will be referred to the Midwifery Board for final decision.

§831.169. *Disciplinary Action.*

(a) Penalties and sanctions. If the Midwifery Board finds a person has violated the Act and/or rules adopted under the Act or any other law or rule relating to the practice of midwifery in Texas, it shall enter an order imposing one or more of the following:

(1) - (6) (No change.)

(7) required participation by the midwife in one or more education or continuing education programs;

(8) - (12) (No change.)

(b) Failure to cooperate. Failure to provide all records requested by the Midwifery Program in the course of a complaint investigation, without good cause shown, shall constitute grounds for additional disciplinary action.

(c) Failure to comply. Failure to comply with a Midwifery Board order shall constitute grounds for additional disciplinary action.

(d) The Midwifery Board shall deny renewal if required by the Education Code, §57.491 (relating to Defaults on Guaranteed Student Loans).

(e) The Midwifery Board upon receipt of a final court or attorney general's order will suspend a license due to failure to pay child support per the Family Code, Chapter 232.

§831.170. *Complaint Disposition and Appeals.*

(a) - (b) (No change.)

(c) The Midwifery Board may close the complaint due to insufficient evidence or for no violation.

§831.171. *Refunds.*

(a) (No change.)

(b) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the licensed midwife for a service regulated by this chapter.

(c) The Midwifery Board may not require payment of other damages or estimate harm in a refund order.

§831.172. *Cease and Desist Order.*

(a) If it appears to the Midwifery Board that a licensee or a person who is not licensed under this chapter is violating the Act, this section, or another state statute or rule relating to the practice of midwifery, the Midwifery Board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) (No change.)

§831.173. *Emergency Suspension.*

(a) The Midwifery Board or a three-member committee of Midwifery Board members designated by the Midwifery Board shall temporarily suspend a midwife's ~~[the]~~ license ~~[of a documented midwife]~~ if the Midwifery Board or committee determines from the evidence or information presented to it that continued practice by the licensed midwife would constitute a continuing and imminent threat to the public welfare.

(b) - (d) (No change.)

§831.174. *Default Order.*

(a) For purposes of this section, default means the failure of the respondent to appear in person or by legal representative on the day and at the time set for hearing in a contested case or the failure to appear by telephone in accordance with the notice of hearing.

(b) Remedies available upon default. The Administrative Law Judge (ALJ) shall proceed in the party's absence and such failure to appear shall entitle the department to seek informal disposition as provided by the Texas Government Code, Chapter 2001. The ALJ shall grant any motion by the department to remove the case from the contested hearing docket and allow for informal disposition by the board.

(c) The board may enter a default judgment by issuing an order against the defaulting party in which the factual allegations in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof, upon the offer of proof that proper notice was provided to the defaulting party opponent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Texas Government Code, Chapter 2001, and the State Office of Administrative Hearings Rules of Procedure.

(d) Motion to set aside and reopen. A timely motion by the respondent to set aside the default order and reopen the record may be granted if the respondent establishes that the failure to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to mistake, accident, or circumstances beyond the respondent's control.

(1) A motion to set aside the default order and reopen the record shall be filed with the board prior to the time that the order of the board becomes final pursuant to the provisions of the Texas Government Code.

(2) A motion to set aside the default order and reopen the record is not a motion for rehearing and is not to be considered a substitute for a motion for rehearing. The filing of a motion to set aside the default order and reopen has no effect on either the statutory time periods for the filing of a motion for rehearing or on the time period for ruling on a motion for rehearing, as provided in the Texas Government Code.

(e) This subsection also applies to cases where service of the notice of hearing on a defaulting party is shown only by proof that the notice was sent to the party's last known address as shown on the department's records, with no showing of actual receipt by the defaulting party or the defaulting party's agent. In that situation, the default procedures described in subsection (c) of this section may be used if there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to the defaulting party's last known address.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2007.

TRD-200700959

Susan Chick

Chair

Texas Midwifery Board

Earliest possible date of adoption: April 22, 2007

For further information, please call: (512) 458-7111 x6972



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 419. MENTAL HEALTH SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§419.371,

419.373 - 419.377, and 419.379 and the repeal of §419.372 and §419.378, concerning Institutions for Mental Diseases (IMD).

BACKGROUND AND PURPOSE

The department is authorized to administer the Texas Medicaid IMD program. The rules in this subchapter describe the criteria used to determine whether an IMD provider is eligible to receive Medicaid reimbursement for inpatient hospital services provided to people aged 65 and older in an IMD. They describe the methods by which IMD provider eligibility is established and reimbursement for covered services is accomplished, and the standards for which IMD providers will be held accountable. The proposed amendments and repeals are necessary to update statutory and other references, to ensure consistency with current law and best practices, and to provide greater clarity to the rules.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 419.371 - 419.379 have been reviewed; and the department has determined that reasons for adopting these sections continue to exist because rules on this subject are needed, with the exception of §419.372 and §419.378, which are proposed for repeal.

SECTION-BY-SECTION SUMMARY

Proposed amendments to §419.371 include incorporating the language from §419.372 and changing the title to Purpose and Application, and §419.372 is proposed for repeal.

An amendment to §419.373 is proposed for the definition of "Mental diseases" to delete reference to a specific edition of the International Classification of Diseases and to add reference to the Diagnostic and Statistical Manual of Mental Disorders in order to define the term as an inclusive and up-to-date listing of relevant diagnoses.

A proposed amendment to §419.375(c) would eliminate the requirement that an IMD provider be given a maximum of 48 hours notice before a review. The department is authorized under Health and Safety Code, §533.015, to make any inspection of a facility or program under the department's jurisdiction without announcing the inspection. The proposed change is necessary to afford staff sufficient flexibility to accomplish the reviews, and the rule would not prohibit the department from continuing to provide notice.

Additional amendments to §419.375(c) identify provider accountability for assessing barriers to serving the patient in a less restrictive setting and taking efforts to achieve a less restrictive placement for the patient. This change implements requirements of the U. S. Supreme Court decision in *Olmstead v. L.C.*, 527 U. S. 581 (1999). The proposed amendment to §419.375(c)(2) makes paragraph (3) repetitive and it is proposed for deletion.

Amendments proposed for §419.375(d) identify the failure to implement a corrective action plan as a contract violation and clarify that the provider would be subject to sanctions set forth in the contract, including termination. With these changes, paragraphs (1) and (2) of subsection (d) are proposed for deletion as unnecessary.

A new paragraph (7) is proposed for addition to subsection (b) of §419.376 to identify noncompliance with rules or a corrective action plan as a basis for contract termination. A proposed amendment to subsection (c) would permit sanctions identified in the

contract to be applied for failure to timely submit an acceptable cost report. Subsection (d) is proposed for amendment to remove reference to outdated adverse action rules and to update reference to the HHSC rules governing contested case hearings for contract terminations. Subsection (e) would be amended to update reference to the HHSC rules governing Medicaid fraud and abuse. In addition, the title of §419.376 would be revised to reflect more accurately the substance of the rule.

Additional amendments are also proposed to §§419.373 - 419.377 in order to update and correct references to the name of the department and the commission, correct grammatical errors and statutory references, and improve the clarity of the rules. Section 419.378 is proposed for repeal as unnecessary. Proposed amendments to §419.379, regarding required distribution of the rules, involve removing reference to the Texas MHMR Board and associated renumbering of paragraphs.

FISCAL NOTE

Machelle Pharr, the department's Chief Financial Officer, has determined that, for each year of the first five-year period that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Wilson Day, Director of the department's Budget Section, has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Dave Wanser, the department's Deputy Commissioner for Behavioral Health, has also determined that, for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to clarify and update the criteria used to determine IMD provider eligibility to receive Medicaid reimbursement and the methods for holding IMD providers accountable for compliance.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, 2001.0225. "Major environmental rule" is defined to mean a rule, the specific intent of which is, to protect the environment or reduce the risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted in writing to Chris DeWitt, Department of State Health Services, Mail Code 2018, 909 West 45th Street, Austin, Texas 78751, or by e-mail to chris.dewitt@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER J. INSTITUTIONS FOR MENTAL DISEASES

25 TAC §§419.371, 419.373 - 419.377, 419.379

STATUTORY AUTHORITY

The proposed amendments are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531. Review of the sections implements Government Code, §2001.039.

§419.371. Purpose and Application.

The purpose of this subchapter is to describe the criteria used to determine whether a [an IMD] provider is eligible to receive Medicaid reimbursement for inpatient hospital services to people aged 65 and older in an institution for mental diseases (IMD) and to describe the methods by which patient and [IMD] provider eligibility are established and reimbursement for covered services is accomplished. This subchapter applies to all IMD providers.

§419.373. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Department--The [Texas] Department of State [Mental] Health Services [and Mental Retardation (TDMHMR)] or its designee.

(2) HHSC--The [Texas] Health and Human Services Commission or its designee.

(3) - (6) (No change.)

(7) Mental diseases--Diseases listed as mental disorders in the latest editions of the International Classification of Diseases and the Diagnostic and Statistical Manual of Mental Disorders [, Ninth Edition, modified for clinical applications (ICD-9-CM)], with the exception of mental retardation and chemical dependency disorders.

(8) Qualified mental health professional--A person acting within the scope of his or her training and licensure or certification, who is a:

(A) licensed social worker, as defined by the Social Work Practice Act, Occupations Code, §505.002(6) [Human Resources Code, §50.001];

(B) licensed professional counselor, as defined by the Licensed Professional Counselor Act, Occupations Code, §503.002(4) [Texas Civil Statutes, Article 4512g, §2i];

(C) physician, as defined by the Medical Practice Act, Occupations Code, §151.002(12) [Texas Civil Statutes, Article 4495b §1.03], or a person employed by any agency of the United States having a license to practice medicine in any state of the United States;

(D) licensed [registered] nurse as provided for and defined in the Nursing [Nurse] Practice Act, Occupations Code, Chapter 301 [Texas Civil Statutes, Articles 4513-4528]; or

(E) psychologist, as defined by the Psychologists' [Certification and] Licensing Act, Occupations Code, §501.002(5) [Texas Civil Statutes, Article 4512e, §2].

§419.374. Eligible Population.

(a) IMD provider reimbursement [Reimbursement for IMD services] is limited to IMD services provided to individuals:

(1) - (7) (No change.)

(8) for whom the department has authorized IMD services based on medical necessity, as follows: [-]

(A) Requests for initial authorization for IMD services must be submitted to the department [department's Office of Medicaid Administration] within seven calendar days after the first day for which Medicaid reimbursement for the provision of IMD services will be requested.

(B) Requests [Request] for authorization of continued stay must be submitted no later than seven calendar days prior to the end date of the initial and all subsequent authorizations. Initial and continued stay authorizations are valid for up to 31 calendar days.

(b) Any Medicaid eligible individual whose request for eligibility for IMD services is denied or is not acted upon with reasonable promptness, or whose IMD services have been terminated, suspended, or reduced by the department [TDMHMR] is entitled to a fair hearing, conducted in accordance with rules for fair hearings described in Title 1, Texas Administrative Code, Chapter 357, Subchapter A (relating to Medicaid Fair Hearings) [by TDHS]. A request for a fair hearing must be submitted to the department [TDMHMR Office of Medicaid Administration] and received within 90 days from the date the notice of denial of eligibility for IMD services or notice of termination, suspension, or reduction of IMD services is mailed.

§419.375. IMD Provider Eligibility for Reimbursement.

(a) To be eligible for reimbursement for IMD services, an IMD provider must:

(1) submit an approved application for enrollment through means established by the department, [department's Office of Medicaid Administration] to include evidence that the provider:

(A) meets the Medicare conditions of participation referenced in 42 CFR §482.60(b);

(B) - (D) (No change.)

(2) have in effect a written provider agreement with the department which:

(A) describes respective responsibilities of the provider and the department [department's Office of Medicaid Administration], including arrangements to ensure:

(i) - (ii) (No change.)

(iii) access by the department and HHSC to the institution, its patients, and patients' records when necessary to carry out the agencies' [agency's] responsibilities;

(iv) - (v) (No change.)

(B) (No change.)

(C) assures that the provider is meeting the requirements specified in 42 CFR §440.140(a) pertaining to providers of inpatient hospital services to persons age 65 or older in institutions for mental diseases;

(D) assures that the provider is in compliance with those provisions of the Texas Administrative Code, Title 25, Part I [H], that relate to patient care and treatment in inpatient mental health facilities;

(E) - (F) (No change.)

(b) An IMD provider's eligibility for reimbursement must be renewed periodically at a time designated by the department [department's Office of Medicaid Administration], but not to exceed two years.

(c) Evidence of compliance with subsection (a) of this section is validated through reviews by the department, which [department's Office of Medicaid Administration: Reviews] occur at intervals decided upon by the department. [No IMD provider is notified more than 48 hours before the scheduled review.] For each Medicaid patient, the department additionally reviews:

(1) the adequacy of services available to meet the patient's current health needs and promote the patient's maximum physical, mental, and psychosocial well-being; and

(2) the necessity or desirability of the patient's continued placement in the IMD, including an examination of barriers to serving the patient in a less restrictive setting and the efforts of the IMD to achieve a less restrictive placement for the patient. [; and]

[(3) the feasibility of meeting the patient's mental and physical health care needs through alternative institutional or non-institutional care.]

(d) If the IMD provider fails to provide evidence of compliance with subsection (c) [(4) - (3)] of this section, then the provider may be required to [must] take corrective action [; as needed;] based on the findings contained in the department's report. If corrective action is required, the IMD provider must submit a corrective action plan to the department for approval. Failure to implement the corrective action plan constitutes a contract violation and the IMD provider may be subjected to any sanctions provided for in the contract, including termination.

[(1) If the IMD provider fails to take corrective action, recoupment of Medicaid funds associated with the finding(s) is initiated as provided for in Chapter 409, Subchapter C of this title (relating to Fraud and Abuse and Recovery of Funds).]

[(2) Recoupment is an adverse action for which the IMD provider is entitled to an administrative hearing in accordance with Chapter 409, Subchapter B of this title (relating to Adverse Actions).]

§419.376. IMD Provider Reimbursement and Termination.

(a) Reimbursement for IMD services provided to eligible individuals begins on the date established by written notice from the department [department's Office of Medicaid Administration] and is contingent upon validation of evidence of IMD provider eligibility as described in §419.375(c) of this title (relating to IMD Provider Eligibility for Reimbursement).

(b) An IMD provider's agreement with the department is subject to termination with written notice on the date that any of the following occurs:

(1) - (3) (No change.)

(4) demonstrated noncompliance with those provisions of the Texas Administrative Code, Title 25, Part I [H], that relate to patient care and treatment in inpatient mental health facilities, or with state laws governing admission and treatment of persons with mental illness;

(5) breach of the written provider agreement described in §419.375(a)(2) of this title (relating to IMD Provider Eligibility for Reimbursement); [or]

(6) termination of participation as a Medicaid provider by HHSC; or [in the reimbursement for services in the IMD Medicaid program.]

(7) evidence of noncompliance with the rules in this subchapter or a corrective action plan that is based on findings made by the department in a review described in §419.375(c) of this title.

(c) Failure to submit an acceptable cost report in the required time frame constitutes a contract violation and may result in sanctions provided for in the contract, including a hold of vendor payments.

(d) Termination of the IMD provider agreement is an [and vendor hold are] adverse action [actions] for which the IMD provider is entitled to a contested case [an administrative] hearing as described in Texas Administrative Code, Title 1, Chapter 357, Subchapter I (relating to Formal Appeals) [accordance with Chapter 409, Subchapter B of this title (relating to Adverse Actions)].

(e) IMD providers that receive Medicaid reimbursement for IMD services are governed by Texas Administrative Code, Title 1, Chapter 371 (relating to Medicaid and other Health and Human Services Fraud and Abuse Program Integrity) [Chapter 409, Subchapter C of this title (relating to Fraud and Abuse and Recovery of Funds)].

§419.377. Discharge Criteria.

IMD providers must be in compliance with the following rules, as applicable, regarding discharge of individuals receiving IMD services:

(1) Chapter 412 [402], Subchapter D [A] of this title (relating to Mental Health Services--Admission, Continuity and Discharge; and [Admissions, Transfers, Absences and Discharges--Mental Health Facilities]);

[(2) Chapter 402, Subchapter B of this title (relating to Continuity of Services--Mental Health Services); and]

(2) [(3)] Chapter 411 [401], Subchapter J of this title (relating to Standards of Care and Treatment in Psychiatric Hospitals).

§419.379. Distribution.

This subchapter shall be distributed to:

[(1) members of the Texas MHMR Board;]

(1) [(2)] executive[, management, and program staff of Central Office;

(2) [(3)] chief executive officers of all IMD providers; and

(3) [(4)] advocacy organizations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2007.

TRD-200700943

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 22, 2007

For further information, please call: (512) 458-7111 x6972



25 TAC §419.372, §419.378

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Department of State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect the Health and Safety Code, Chapter 1001, and Government Code, Chapter 531. Review of the sections implements Government Code, §2001.039.

§419.372. Application.

§419.378. References.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 12, 2007.

TRD-200700944

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 22, 2007

For further information, please call: (512) 458-7111 x6972



CHAPTER 450. COUNSELOR LICENSURE

25 TAC §§450.100 - 450.117, 450.120 - 450.126

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), proposes new §450.100 and amendments to §§450.101 - 450.117, and 450.120 - 450.126 concerning the licensing and regulation of chemical dependency counselors.

BACKGROUND AND PURPOSE

The new rule and amendments to the rules are needed to correct certain citations and terminology, replace references to the department's legacy agency, the Texas Commission on Alcohol and Drug Abuse, and delete unnecessary text; to help increase the licensure examination passing rate for counselor interns; to recognize, through reduced supervision requirements, a higher level of competence achieved by counselor interns who have passed both portions of the licensure examination; to improve the ethical standards that apply to both licensed counselors and interns; and to allow persons on or called to active military duty to delay renewal of their license without penalty for the period

of active duty. The amendments also implement statutory provisions for the Texas Online Project by providing for collection of subscription and convenience fees associated with new and renewal application processing through Texas Online. For consistency with other professional licensing programs, the amendments add the ability to pay fees by personal check and, to address the potential for increased costs from returned checks, authorize the department to collect a \$25 fee for returned checks.

SECTION-BY-SECTION SUMMARY

The proposed new §450.100 incorporates by reference currently applicable definitions found in §441.101 of this title, and adopts new and amended definitions to account for the transfer of certain duties, functions, programs, and powers from the Texas Commission on Alcohol and Drug Abuse to the department, and to clarify that inclusion of other licensed individuals within the definition of "Qualified Credentialed Counselor" does not extend the authorized scope of their respective licenses.

In addition to the changes outlined below, the proposed amendments to §§450.101 - 450.117, and 450.120 - 450.126 correct certain internal rule citations, amend references to the former Texas Commission on Alcohol and Drug Abuse to refer to the department, and delete unnecessary text.

The proposed amendment to §450.101 uses the unmodified term "social worker", consistent with Texas Occupations Code, §504.002, but clarifies that the exemption applies only to the extent that a person is acting within the authorized scope of one of the enumerated licenses held by that person.

The proposed amendment to §450.102 corrects the terminology used in the reference to the definition of the KSAs by changing the word "Abilities" to "Attitudes," and corrects the cite reference.

The proposed amendment to §450.104 creates a fee for returned checks and, consistent with other professions licensed by the department, allows counselor fees to now be paid with personal check. Pursuant to Texas Government Code, §2054.252, the proposed amendment allows the Department to collect subscription and convenience fees to recover costs associated with new and renewal application processing through Texas Online.

The proposed amendment to §450.112 allows counselor interns to take each portion of the licensure examination four times, both verbal and written, without requiring that the two portions be taken together.

The proposed amendment to §450.116 modifies for clarification the description of social workers who, because of their dual licensure status, are required to complete fewer continuing education hours to maintain their license as a licensed chemical dependency counselor (LCDC). Additionally, these licensees will not have to submit a copy of their non-LCDC license at the time of renewal, since the department has the capacity to independently verify their non-LCDC licensure status. The amendment also adds provisions for licensure renewal for persons on or called to active military duty, in accordance with Texas Occupations Code, Chapter 55.

The proposed amendment to §450.121 adds ethical standards relating to billing for services that were not provided, meeting with clients in inappropriate locations, and prohibiting conduct that could be considered coercive or degrading to the client or another.

The proposed amendment to §450.125 revises the requirements for direct supervision of interns to allow an intern with less than

2,000 hours of documented work experience who has passed both the written and oral examinations to be supervised in accordance with Level III standards.

FISCAL NOTE

Kathryn C. Perkins, Section Director, Health Care Quality Section, has determined that for each calendar year of the first five years the sections are in effect, there will be fiscal implications to the state or local governments as a result of enforcing or administering the sections as proposed. For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with allocation and renewal processing through Texas Online. The estimated increase in revenue will be \$8,800. Any fees collected by the department will be paid to the Texas Online Authority.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there are anticipated costs to small businesses or micro-businesses that pay licensing fees for their personnel required to obtain and/or maintain a chemical dependency counselor license. New and renewal chemical dependency counselor licensure applicants will be required to pay the Texas Online fees proposed to be collected, and, whenever applicable, will have to pay a returned check fee of \$25. Although subscription fees are currently limited by statute not to exceed \$10 per biennial occupational license, convenience fees can be added to fully recover costs, so the estimated increase for each new or renewal application cannot be accurately estimated, since the amounts are set and subject to change by Texas Online Authority. The numbers of businesses paying fees for their employees and the number of counselors for whom they pay also cannot be reasonably estimated. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Perkins has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is ensuring the health and safety of the public, including through an increase in the number of available licensed chemical dependency counselors and strengthened professional ethical standards.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed new rule and amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Debbie Peterson, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628, extension 2725 or by e-mail to Debbie.Peterson@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed new rule and amendments are authorized by Texas Occupations Code, §504.051, which authorizes rule-making necessary to carry out the duties established under Texas Occupations Code, Chapter 504, and the establishment of standards of conduct and ethics for Chapter 504 licensees; by Texas Occupations Code, §504.053, which authorizes the imposition of licensing and other fees to cover the costs of administering Texas Occupations Code, Chapter 504; by Texas Government Code, §2054.252, which requires the department to participate in an electronic system for occupational licensing transactions and authorizes an increase in licensure fees and the imposition of convenience fees on license holders to recover costs associated with online application and renewal application processing; by Texas Occupations Code, §§55.002 and 55.003, which authorize rulemaking to exempt active duty military personnel from late renewal fees and penalties, and authorize additional time for persons called to active duty to meet continuing education and renewal requirements; and by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed new rule and amendments affect the Texas Occupations Code, Chapters 55 and 504; Health and Safety Code, Chapter 1001; and Government Code, Chapters 2054 and 531.

§450.100. Definitions.

The words and terms used in this chapter shall have the meanings set forth in §441.101 of this title unless the context clearly indicates otherwise, except as follows.

(1) "Commissioner"--The Commissioner of the Department of State Health Services.

(2) "Department"--The Department of State Health Services and its Commissioner, Assistant Commissioners, organizational units, divisions and/or employees.

(3) "Qualified Credentialed Counselor" or "QCC"--A licensed chemical dependency counselor or one of the practitioners listed below who is licensed and in good standing in the State of Texas, to the extent that such person is acting within the authorized scope of the person's license, including:

- (A) licensed professional counselor (LPC);
- (B) licensed master social worker (LMSW);
- (C) licensed marriage and family therapist (LMFT);

(D) licensed psychologist;

(E) licensed physician;

(F) licensed physician's assistant;

(G) certified addictions registered nurse (CARN); or

(H) nurse practitioner recognized by the Board of Nurse Examiners as a clinical nurse specialist or practitioner with a specialty in psych-mental health (APN-P/MN).

§450.101. License Required.

(a) (No change.)

(b) The following people are exempt from this chapter when they are acting within the scope of their authorized duties:

(1) - (2) (No change.)

(3) to the extent such licensees are acting within the authorized scope of their respective licenses, licensed physicians, licensed psychologists, licensed professional counselors (LPC), licensed marriage and family therapists (LMFT), and licensed [master] social workers [(LMSW)];

(4) - (5) (No change.)

(6) counselor interns who are registered with the department [Commission] and working under the auspices of a registered clinical training institution.

(c) (No change.)

(d) A person who qualifies for an exemption but chooses to get a license from the department [Commission] is subject to the same rules and disciplinary actions as other licensees.

§450.102. Scope of Practice.

(a) A licensed chemical dependency counselor (LCDC) is licensed to provide chemical dependency counseling services involving the application of the principles, methods, and procedures of the chemical dependency profession as defined by the profession's ethical standards and the Knowledge, Skills, and Attitudes [Abilities] (KSAs) as defined in Chapter 441 [40 TAC ch. 441] of this title (relating to General Provisions). The license does not qualify an individual to provide services outside this scope of practice.

(b) (No change.)

§450.103. Department [Commission] Review.

Pursuant to a department [Commission] inquiry regarding an alleged violation of the [its] rules or the law, a person licensed, registered, or approved under this chapter shall produce records, documents and other evidence related to the license, registration, or approval to the department [Commission], upon request, unless otherwise prohibited by law. A person licensed, registered or approved under this chapter, shall not interfere with the department's [Commission's] access to clients, witnesses or other parties.

§450.104. Fees.

(a) The schedule for fees is:

(1) - (5) (No change.)

(6) certificate replacement or duplication fee--\$25; and [-]

(7) returned check fee--\$25.

(b) The department [Commission] charges a \$25 fee for a printed list of licensed counselors or a set of mailing labels.

(c) The department [~~Commission~~] may contract with an outside organization to administer the licensure examination, and the fee charged by the contract organization is subject to change. The current fee shall be printed in the registration form. Examination fees shall be paid directly to the contract organization administering the examination.

(d) Licensure fees paid to the department [~~Commission~~] are not refundable.

(e) Fees shall be paid in full with a personal check, cashier's check, commercial check, or money order. [~~If online application is available, the fee may be paid with a credit card and is subject to a surcharge by the online vendor.~~]

(f) For all new and renewal applications, the department is authorized to collect subscription and convenience fees in amounts determined by the Texas Online Authority to recover costs associated with new and renewal application processing through Texas Online. The fees may be paid with a credit card when applying for or renewing a license online.

§450.105. Licensure Application Standards and Registration.

(a) Every person seeking licensure shall register with the department [~~Commission~~] by submitting the following items in a form acceptable to the department [~~Commission~~]:

(1) (No change.)

(2) the department's [~~Commission's~~] current application form which has been completed, signed, dated, and notarized;

(3) (No change.)

(4) two sets of fingerprints completed according to department [~~Commission~~] instructions with cards issued by the department [~~Commission~~]; and

(5) documentation that the applicant has successfully completed intern registration requirements in §450.106 [~~§150-106~~] of this title (relating to Requirements for Counselor Intern Registration).

(b) An applicant shall:

(1) read the department [~~Commission~~] rules (Chapter 450 of this title) [~~(40 TAC ch. 150 (2004))~~];

(2) (No change.)

(3) allow the department [~~Commission~~] to seek any additional information or references necessary; and

(4) notify the department [~~Commission~~] in writing within 30 days of a change in address.

(c) Application materials become the property of the department [~~Commission~~].

(d) An application packet will not be accepted unless it is complete.

(1) Incomplete documents will be returned to the sender. The department [~~Commission~~] will hold the remaining documents, but will not accept the application until all outstanding documents have been completed and approved.

(2) (No change.)

(e) (No change.)

(f) An applicant must receive written notice of registration from the department [~~Commission~~] before accumulating any supervised work experience or taking the examination or providing chemical dependency services.

(g) Within 45 days of receipt of the application, the department [~~Commission~~] shall notify the applicant that the application is complete or specify the additional information required.

(h) By signing the application, the applicant accepts responsibility for remaining knowledgeable of licensure rules, including revisions.

~~[(1) Current rules are published in the Texas Administrative Code and posted on the Secretary of State's web site and the Commission's web site.]~~

~~[(2) Proposed rule changes are published in the Texas Register and posted on the Secretary of State's web site and the Commission's web site.]~~

§450.106. Requirements for Counselor Intern Registration.

To be eligible for a counselor intern registration under this chapter, a person must:

(1) - (2) (No change.)

(3) successfully complete 270 classroom hours of chemical dependency curricula as described in §450.107 [~~§150-107~~] of this title (relating to Standards for 270 Educational Hours) or meet the educational waiver contained in §450.109 [~~§150-109~~] of this title (relating to Education and Experience Exemptions/Waivers);

(4) complete 300 hours of approved supervised field work practicum as described in §450.108 [~~§150-108~~] of this title (relating to Practicum Standards) or meet the educational waiver contained in §450.109 [~~§150-109~~] of this title (relating to Education and Experience Exemptions/Waivers);

(5) pass the criminal history standards described in §450.115 [~~§150-115~~] of this title (relating to Criminal History Standards);

(6) sign a written agreement to abide by the ethical standards contained in §450.121 [~~§150-121~~] of this title (relating to Ethical Standards); and

(7) be worthy of the public trust and confidence as determined by the department [~~Commission~~].

§450.107. Standards for 270 Educational Hours.

(a) - (d) (No change.)

(e) The department [~~Commission~~] shall not accept hours unless documented with a passing grade on an official transcript from the school. The applicant shall submit additional information requested by the department [~~Commission~~] if needed to verify the content of a course.

§450.108. Practicum Standards.

(a) - (b) (No change.)

(c) The department [~~Commission~~] shall not accept a practicum without an official transcript from the school and a letter from the school's educational coordinator or chair verifying that the practicum was completed in the field of substance abuse.

(d) - (f) (No change.)

§450.109. Education and Experience Exemptions/Waivers.

(a) Applicants holding a degree in chemical dependency counseling, sociology, psychology, or any other degree approved by the department [~~Commission~~] are exempt from the 270 hours of education and the 300 hour practicum. The applicant must submit an official college transcript with the official seal of the college and the signature of

the registrar. Degree programs approved by the department [~~Commission~~] include baccalaureate, masters, or doctoral degrees with a course of study in human behavior/development and service delivery.

(b) The department [~~Commission~~] may waive the 4,000 hours of supervised work experience for individuals who hold a masters or doctoral degree in social work or a masters or doctoral degree in a counseling-related field with 48 semester hours of graduate-level courses. Counseling related degrees shall be reviewed on a case-by-case basis. The applicant shall submit an official college transcript with the official seal of the college and the signature of the registrar, and any other related documentation requested by the department [~~Commission~~].

§450.110. Requirements for Licensure.

To be eligible for a license under this chapter, a person must:

(1) complete the application related to §450.105 [~~§150.105~~] of this title (relating to Licensure Application Standards and Registration);

(2) meet the requirements to be a counselor intern in §450.106 [~~§150.106~~] of this title (relating to Requirements for Counselor Intern Requirements);

(3) hold an associate degree or more advanced degree with a course of study in human behavior/development and service delivery, with the exception of:

(A) those applicants who meet the requirements for intern registration and submit an application to the department [~~Commission~~] by September 1, 2004; [;] and

(B) (No change.)

(4) complete 4,000 hours of approved supervised experience working with chemically dependent persons as described in §450.111 [~~§150.111~~] of this title (relating to Standards for Supervised Work Experience);

(5) pass the written chemical dependency counselor examination approved by the department [~~Commission~~];

(6) (No change.)

(7) pass an oral chemical dependency counselor examination approved by the department [~~Commission~~]; and

(8) (No change.)

§450.111. Standards for Supervised Work Experience.

(a) An applicant must be registered with the department [~~Commission~~] as described in §§450.105 [~~§§150.105~~] and 450.106 [~~150.106~~] of this title (relating to Licensure Application Standards and Registration and Requirements for Counselor Intern Registration) before accumulating supervised work experience.

(b) (No change.)

(c) Work experience must be documented on the department's [~~Commission's~~] supervised work experience documentation form and signed by the agency's CTI coordinator.

(1) - (2) (No change.)

(d) Out-of-state work experience will be accepted only if the following conditions are met.

(1) - (2) (No change.)

(3) The supervised work experience must be documented on the department's [~~Commission's~~] supervised work experience form or a comparable form used by the governing agency of the other state.

(e) - (g) (No change.)

(h) It is the applicant's responsibility to verify that the training institution is registered with the department [~~Commission~~]. The department [~~Commission~~] shall not accept hours from an unregistered provider. A list of registered CTIs is available on the department's [~~Commission's~~] web site, under "Licensure" at <http://www.dshs.state.tx.us/sa/>.

§450.112. Examination.

(a) To be eligible for examination, an applicant shall:

(1) be registered with the department [~~Commission~~] as an intern;

(2) - (3) (No change.)

(b) (No change.)

(c) An applicant may only take each portion of the examination four times, and all testing must be completed within five years from the date of registration. [An applicant must take the written and oral portions of the examination together unless the applicant has already passed one part of the examination.]

(d) If an applicant does not pass both parts of the examination within five years of the date of registration, does not complete the approved associate degree and/or does not complete the required 4,000 hours of supervised work experience, the department [~~Commission~~] shall deny the application.

(1) (No change.)

(2) A person whose application has been denied under this section may reapply for licensure only after completing 24 semester hours of course work pre-approved by the department [~~Commission~~] at an institution of higher education. The new application shall not be considered complete without an official college transcript documenting the required coursework.

(3) If the department [~~Commission~~] accepts the new application, the person must complete the remaining requirements for licensure and may take only the failed portion(s) of the examination an additional three times. Transition standards will not apply. The additional tests must be completed within three years of the new date of registration. During this period, the applicant may provide chemical dependency counseling services as an intern under the auspices of a registered clinical training institution.

§450.113. Issuing Licenses.

(a) When the applicant has met all requirements for licensure and paid the licensure fee, the department [~~Commission~~] will issue a license within 45 days.

(b) LCDCs shall keep current versions of the certificate of licensure and the department's [~~Commission's~~] public complaint notice prominently displayed in their place of business.

(c) A licensee shall not duplicate the licensure certificate to obtain a second copy of the license. A licensee can obtain an official duplicate certificate from the department [~~Commission~~] by submitting a written request and the fee specified in §450.104 [~~§150.104~~] of this title (relating to Fees).

(d) The department [~~Commission~~] will replace a lost or damaged certificate if the licensee provides:

(1) - (4) (No change.)

(e) A license replaced because of a printing error or mail damage will be replaced without cost, but all other license replacements require a fee, as specified in §450.104 [~~§150.104~~] of this title (relating to Fees). The fee shall be paid in advance with a money order, commercial check, or cashier's check.

(f) LCDCs shall notify the department [~~Commission~~] in writing within 30 days of a change in name or address.

(g) - (h) (No change.)

§450.114. Licensure through Reciprocity.

(a) A person seeking application through reciprocity shall submit:

(1) (No change.)

(2) the department's [~~Commission's~~] current reciprocity application which has been completed, signed, dated, and notarized;

(3) two sets of fingerprints on cards issued by the department [~~Commission~~];

(4) - (6) (No change.)

(b) The applicant shall meet the criminal history standards described in §450.115 [~~§150.115~~] of this title (relating to Criminal History Standards).

(c) The department [~~Commission~~] may issue a license based on reciprocity if the individual is currently licensed or certified by another state as a chemical dependency counselor.

(d) The department [~~Commission~~] shall not issue a license based on reciprocity unless it finds that the licensing or certification standards of the state of origin are at least substantially equivalent to the requirements for licensure of this chapter.

(e) (No change.)

§450.115. Criminal History Standards.

(a) The department [~~Commission~~] reviews the criminal history of every applicant for licensure. Reviews are conducted when:

(1) an applicant registers with the department [~~Commission~~] as an intern;

(2) (No change.)

(3) the department [~~Commission~~] receives information that a counselor or intern has been charged, indicted, placed on deferred adjudication, community supervision, or probation, or convicted of an offense described in subsection (d) of this section.

(b) (No change.)

(c) The department [~~Commission~~] obtains criminal history information from the Texas Department of Public Safety, including information from the Federal Bureau of Investigations (FBI).

(d) The department [~~Commission~~] determines whether an offense is directly related to the duties and responsibilities of a LCDC. The department [~~Commission~~] has identified the following related offenses and categorized them according to the seriousness of the offense. If an offense is not listed in one of these categories and the department [~~Commission~~] determines that it is directly related to chemical dependency counseling, the department [~~Commission~~] shall determine the appropriate category.

(1) - (5) (No change.)

(e) The department [~~Commission~~] shall deny the initial or renewal license application of a person who has been convicted or placed on community supervision in any jurisdiction for a:

(1) - (5) (No change.)

(f) The department [~~Commission~~] shall deny the intern registration application of a person who has been convicted or placed on community supervision in any jurisdiction for a:

(1) - (5) (No change.)

(g) The department [~~Commission~~] shall defer action on the application of a person who has been charged, indicted, or placed on deferred adjudication, community supervision, or probation for an offense described in subsection (d) of this section. The person may reapply when:

(1) - (2) (No change.)

(h) The department [~~Commission~~] shall suspend a counselor's license or an intern's registration if the department [~~Commission~~] receives notice from the Texas Department of Public Safety or another law enforcement agency that the individual has been charged, indicted, placed on deferred adjudication, community supervision, or probation, or convicted of an offense described in subsection (d) of this section.

(1) The department [~~Commission~~] shall send notice stating the grounds for summary suspension by certified mail to the license holder at the address listed in the department's [~~Commission's~~] records. The suspension is effective five days after the date of mailing.

(2) The department [~~Commission~~] shall restore the person's license upon receipt of official documentation that the charges have been dismissed or the person has been found not guilty.

(i) (No change.)

§450.116. License Expiration and Renewal/Active Military Duty.

(a) A license issued under this chapter is valid for two years, or until the expiration date printed on the license. The licensee is responsible for renewing the license in a timely manner. The department [~~Commission~~] shall send the licensee a renewal notice, but failure to receive notice from the department [~~Commission~~] does not waive or extend renewal deadlines.

(b) To renew a license, the counselor shall:

(1) send a complete renewal application to the department [~~Commission~~];

(2) (No change.)

(3) submit two sets of fingerprints completed according to department [~~Commission~~] instructions with cards issued by the department [~~Commission~~] (if the counselor has not previously submitted fingerprint cards for initial licensure through examination or licensure renewal);

(4) meet the criminal history standards described in §450.115 [~~§150.115~~] of this title (relating to Criminal History Standards); and

(5) complete all required continuing education as described in §450.117 [~~section §150.117~~] of this title (relating to Continuing Education Standards).

(c) An [A] LCDC who is also licensed as a social worker whose license permits the licensee to engage in clinical practice, [an LMSW,] LMFT, LPC, physician, or psychologist in the State of Texas shall complete at least 24 hours of continuing education during each two-year licensure period. The 24 hours of education must include the specific courses required in subsection (e) [(f)] and, if applicable, in subsection (f) [(g)]. [The individual must submit a copy of the active non-LCDC licensure certificate to be eligible for this provision.]

(d) - (f) (No change.)

(g) Renewal fees are due on or before the expiration date. A licensee who submits a late renewal application shall pay a penalty fee in addition to the renewal application and licensure fees, as provided in §450.104 [~~§150.104~~] of this title (relating to Fees).

(h) - (j) (No change.)

(k) If a licensee meets the conditions specified in paragraph (1) of this subsection, a licensee on active duty, or ordered by proper authority to active duty, in or with the United States Armed Forces serving outside the State of Texas, is entitled, subject to the provisions of paragraphs (2) and (3) of this subsection, to an additional amount of time, equal to the total number of days that the person serves on active duty, to complete the continuing education requirements outlined in this section and in §450.117 of this title (relating to Continuing Education Standards), and to meet all other renewal requirements specified in this section, including the payment of fees applicable to license renewal. If a complete renewal application and fees are submitted within the additional amount of time allowed by this subsection, no late renewal penalty fee will be imposed.

(1) Written notification from the licensee to the department's chemical dependency counselor licensing staff of the licensee's eligibility under this subsection for an extension of time to renew a license, and a copy of the official order(s) or other official documentation showing the licensee is or was on or ordered to active duty outside the State of Texas, and the length of active duty, shall be received by the department no later than 60 days after the licensee is discharged from active duty. Whenever possible, the licensee shall provide written notification of the licensee's intent to extend the renewal period under this subsection before the commencement of active duty or the scheduled expiration of the licensee's license.

(2) A licensee who is eligible to extend the renewal period under this subsection remains subject to subsection (i) of this section after the regularly scheduled expiration of the LCDC's license, and until such time, if any, as the licensee completes renewal of the license in accordance with this subsection.

(3) If the licensee's renewal period is extended pursuant to this subsection, the licensee's subsequent renewal cycle shall commence on the date that the renewal application is finally granted.

§450.117. Continuing Education Standards.

(a) The department [Commission] will accept continuing education (CE) hours that meet the criteria in this section. Hours that do not meet these criteria may be evaluated on a case-by-case basis.

(b) Subject to department [Commission] review, the department [Commission] will accept continuing education credits from:

(1) - (3) (No change.)

(c) (No change.)

(d) For counselors who live out of state, the department [Commission] will also accept continuing education hours approved by other state and Federal agencies.

(e) (No change.)

(f) The department [Commission] will also accept education hours from an accredited college or university.

(1) - (2) (No change.)

(g) - (h) (No change.)

§450.120. Counseling Through Electronic Means.

(a) - (b) (No change.)

(c) The department [Commission] maintains its authority to regulate the counselor regardless of the location of the client.

(d) - (h) (No change.)

(i) The counselor must provide a description of all services offered to the client in writing and describe who is appropriate for the services. The description must include:

(1) a grievance procedure and provide a link to the department [Commission] for filing a complaint when using the Internet and the toll-free number for the department [Commission] when counseling by telephone;

(2) (No change.)

(3) a link to the licensure verification page when using the Internet and the toll-free number for the department [Commission] when counseling by telephone;

(4) - (5) (No change.)

(j) - (k) (No change.)

§450.121. Ethical Standards.

(a) - (c) (No change.)

(d) The LCDC shall:

(1) promptly report to the department [Commission] any suspected, alleged, or substantiated incidents of abuse, neglect, or exploitation committed by self or other LCDCs or registered counselor interns;

(2) promptly report to the department [Commission] violations of Texas Occupations Code, Chapter 504 [TEX. OCC. CODE ANN. ch. 504 (Vernon 2004)], or rules adopted under the statute, including violations of this section by self or others, unless making such a report would violate Federal confidentiality regulations found in 42 Code of Federal Regulations, Part 2 [C.F.R. pt. 2];

(3) - (4) (No change.)

(e) - (f) (No change.)

(g) The LCDC shall:

(1) report information fairly, professionally, and accurately to clients, other professionals, the department [Commission], and the general public;

(2) maintain appropriate documentation of services provided; and

(3) not submit or cause or allow to be submitted to a client or third party payer a bill for services that were not provided or were improper, unreasonable, or medically or clinically unnecessary, with the exception of a missed appointment; and

(4) [3] provide responsible and objective training and supervision to interns and subordinates under the counselor's supervision. This includes properly documenting supervision and work experience and providing supervisory documentation needed for licensure.

(h) (No change.)

(i) The LCDC shall respect a client's dignity, and shall not engage in any action that may injure the welfare of any client or person to whom the counselor is providing services. The LCDC shall:

(1) - (7) (No change.)

(8) not request a client to divulge confidential information that is not necessary and appropriate for the services being provided; and

(9) not offer or provide chemical dependency counseling or related services, nor meet with a client, in settings or locations which are inappropriate, harmful to the client or others, or which would tend to discredit the profession of chemical dependency counseling; and[-]

(10) refrain from using any method or engaging in any conduct that could be considered coercive or degrading to the client or another, including, without limitation, threats, negative labeling, or attempts to provoke shame or humiliation.

(j) - (k) (No change.)

(l) The LCDC shall treat other professionals with respect, courtesy, and fairness, and shall:

(1) (No change.)

(2) cooperate with the department [~~Commission~~], professional peer review groups or programs, and professional ethics committees or associations, and promptly supply all requested or relevant information unless prohibited by law; and

(3) (No change.)

(m) Prior to treatment, the LCDC shall inform the client of the counselor's fee schedule and establish financial arrangements with a client. The counselor shall not:

(1) (No change.)

(2) pay or receive any commission [~~Commission~~], consideration, or benefit of any kind related to the referral of a client for treatment;

(3) - (4) (No change.)

§450.122. Actions Against a License.

(a) (No change.)

(b) The department [~~Commission~~] shall take action against a license for:

(1) - (3) (No change.)

(4) engaging in false, misleading, or deceptive conduct as defined by Texas Business and Commerce Code, §17.46 [TEX. BUS. & COM. CODE ANN. §17.46 (Vernon 2002 & Supp. 2004)];

(5) - (6) (No change.)

(7) having a license to practice chemical dependency counseling in another jurisdiction refused, suspended, or revoked for a reason that the department [~~Commission~~] finds would constitute a violation of this chapter;

(8) (No change.)

(9) committing an act for which liability exists under Texas Civil Practice and Remedies Code, Chapter 81 [TEX. CIV. PRAC. & REM. CODE ANN. ch. 81 (Vernon 1997 & Supp. 2004)].

(c) The department [~~Commission~~] will determine the length of the probation or suspension. The department [~~Commission~~] may hold a hearing at any time and revoke the probation or suspension.

(d) The department [~~Commission~~] may impose an administrative penalty against a licensee who violates Texas Occupations Code, Chapter 504 [TEX. OCC. CODE ANN. ch. 504 (Vernon 2004)] or a rule or order adopted under the statute.

(e) (No change.)

(f) An individual whose license has been revoked is not eligible to apply for licensure until two years have passed since the date of revocation. During the period of revocation, the individual cannot become a counselor intern. The individual is not eligible to reapply for licensure unless he/she petitions the department [~~Commission~~] and demonstrates that sufficient time has elapsed to allow the events leading to revocation to no longer serve as a basis for denial of application.

The department [~~Commission~~] may require certain conditions be met, before it grants an individual's petition for re-licensure.

(g) The department [~~Commission~~] shall deny, suspend, and/or refuse to renew the license of a person based on criminal history as provided in §450.115 [~~§150.115~~] of this title (relating to Criminal History Standards).

(h) The department [~~Commission~~] shall implement a final order to suspend the license of a counselor for failure to pay child support as provided by the Texas Family Code, Chapter 232 [TEX. FAM. CODE ANN. ch. 232 (Vernon 1996)].

§450.123. Clinical Training Institution (CTI) Registration.

(a) - (b) (No change.)

(c) The approval is valid for two years. The CTI shall reapply every two years by submitting a completed application form. The department [~~Commission~~] may mail a courtesy notice, but it is the program's responsibility to reapply at least 45 days before the expiration date.

(d) The CTI shall notify the department [~~Commission~~] in writing within 30 days of the following changes:

(1) - (3) (No change.)

(e) The department [~~Commission~~] may withdraw approval if the CTI fails to comply with all applicable department [~~Commission~~] rules.

§450.124. Clinical Training Institution (CTI) Standards.

(a) The training program shall appoint a single training coordinator who is a qualified credentialed counselor (QCC). The training coordinator shall oversee all training activities and ensure compliance with department [~~Commission~~] requirements and rules.

(b) The CTI [~~Clinical Training Institution (CTI)~~] shall establish admission criteria. No applicant shall be admitted without:

(1) documentation that the applicant is registered with the department [~~Commission~~]; and

(2) a signed ethics agreement which is consistent with the LCDC ethical standards in §450.121 [~~§150.121~~] of this title (relating to Ethical Standards).

(c) - (d) (No change.)

(e) All interns must be under the direct supervision of a QCC as described in §450.125 [~~§150.125~~] of this title (relating [~~related~~] to Direct Supervision of Interns).

(f) (No change.)

(g) The CTI shall use the department's [~~Commission's~~] KSA evaluation tool to structure the intern's 4,000 hours of supervised work experience.

(1) - (5) (No change.)

(h) - (i) (No change.)

(j) The CTI coordinator shall send the following documents directly to the department [~~Commission~~] and provide the intern with copies within ten working days from the date the intern completes the required 4,000 hours or leaves the agency:

(1) - (2) (No change.)

(k) - (l) (No change.)

(m) The CTI shall give each student the department's [~~Commission's~~] student CTI assessment form with instructions to complete

the assessment and mail it directly to the department's [~~Commission's~~] counselor licensure department.

(n) The CTI shall use all current forms mandated by the department [~~Commission~~].

(o) (No change.)

(p) The CTI shall inform students of testing requirements and procedures, as well as testing schedules and information provided by the department [~~Commission~~].

(q) - (s) (No change.)

§450.125. Direct Supervision of Interns.

(a) - (e) (No change.)

(f) An individual who has successfully completed the verbal and written portions of the licensing examination may be supervised in accordance with Level III standards set forth in subsection (g) of this section, but is still required to complete 4,000 hours of supervised work experience before achieving graduate status in the absence of a waiver under §450.109 of this title (relating to Education and Experience Exemptions/Waivers).

(g) [(f)] During an intern's last 2,000 hours of required supervised work experience (Level III), the CTI coordinator or QCC designee shall:

(1) be available by phone while the intern is working;

(2) observe and document the intern performing assigned activities as determined necessary by the CTI coordinator;

(3) provide and document one hour of face-to-face individual or group supervision each week; and

(4) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the intern.

(h) [(g)] After an intern achieves graduate status, the CTI coordinator or QCC designee shall:

(1) be available by phone while the graduate intern is working;

(2) provide and document one hour of face-to-face individual or group supervision each week; and

(3) sign off on all clinical assessments, treatment plans, and discharge summaries completed by the graduate intern.

(i) [(h)] A supervisor's schedule must allow an average of two hours of supervision-related activity per week per intern.

§450.126. Intern Violations.

(a) The CTI shall investigate all allegations that an intern has violated the ethical standards described in §450.121 [~~§150.121~~] of this title (relating to Ethical Standards).

(b) (No change.)

(c) The CTI shall submit a written report to the department [~~Commission~~] with 48 hours of substantiating that an intern has:

(1) - (5) (No change.)

(d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on March 9, 2007.

TRD-200700925

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: April 22, 2007

For further information, please call: (512) 458-7111 x6972

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 210. TEXASONLINE

1 TAC §§210.3 - 210.5

The Department of Information Resources (department) adopts TexasOnline Texas E-Grants rules at 1 TAC §210.3, concerning applicability, purpose and agency responsibilities; §210.4, concerning data elements and format; and §210.5, concerning waivers and blanket exemptions. The new rules are adopted without changes from the proposed text as published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10221).

Section 210.3 requires all state agencies, except institutions of higher education, state agencies defined in §531.001(4), Government Code, and state agencies granted an exemption from the requirements by the department, to post a synopsis of all funding opportunities under financial assistance programs at www.dir.state.tx.us/approvals/index, the central website designated by the department. The rule also establishes the responsibilities of each state agency associated with the requirement. Section 210.4, concerning data elements and format, requires state agencies to use the data elements and funding opportunity announcement format posted by the department at www.dir.state.tx.us/approvals/index. Section 210.5, concerning waivers and blanket exemptions, sets forth the waiver requirements for requesting a waiver from the rules from the department.

No comments were received regarding the new sections.

The new sections are adopted under Chapter 2055, Government Code, Subchapter E, Grants Assistance Project, which requires the department to establish an electronic government project to develop an Internet website accessible through TexasOnline through which state agencies post electronic summaries of grant assistance opportunities. The rules are also adopted under §2054.052(a), Government Code, which authorizes the department to adopt rules to implement its responsibilities under Chapter 2054, Government Code; §2054.262, Government Code, which requires the department to adopt rules to implement TexasOnline; and §2054.252(a), Government Code, which requires the department to implement TexasOnline.

No other statutes are affected by these rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2007.

TRD-200700919

Renée Mauzy

General Counsel

Department of Information Resources

Effective date: March 28, 2007

Proposal publication date: December 22, 2006

For further information, please call: (512) 475-4700



PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.110

The Health and Human Services Commission (HHSC) adopts the amendment to §355.110, concerning Informal Reviews and Formal Appeals without changes to the proposed text as published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10460) and will not be republished.

The amended §355.110 allows the update of legacy agency references, update of outdated citations related to legacy agencies rule references which have been incorporated into HHSC rules and correction of erroneous formatting.

HHSC did not receive any comments regarding the proposed rule during the 30-day comment period.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 12, 2007.

TRD-200700937

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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Proposal publication date: December 29, 2006
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SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8061, §355.8063

The Health and Human Services Commission (HHSC or Commission) adopts amendments to §355.8061 and §355.8063, related to implementation of the private hospital upper payment limit (UPL) program. The amendments to §355.8061 are adopted without changes to the proposed text as published in the January 19, 2007, issue of the *Texas Register* (32 TexReg 223) and will not be republished. The amendments to §355.8063 are adopted with changes to the proposed text as published in the January 19, 2007, issue of the *Texas Register* (32 TexReg 223). The text of the rule will be republished.

Amended §355.8061 establishes the methodology HHSC will use to distribute UPL supplemental payments for outpatient services to private hospitals. Amended §355.8063 establishes the methodology HHSC will use to distribute UPL supplemental payments for inpatient services to private hospitals.

The amended rules will implement Medicaid UPL supplemental payments to privately-owned hospitals in Hidalgo, Webb, Maverick, Montgomery, Travis, and Bexar counties effective June 11, 2005, and to privately-owned hospitals in all other Texas counties effective November 12, 2005.

Regarding §355.8063, HHSC has determined that it will begin making quarterly supplemental payments sooner than June 1, 2007. Accordingly, in subsection (t)(4)(G), HHSC has replaced June 1, 2007, with April 1, 2007. HHSC also made a nonsubstantive, grammatical change to subsection (t)(4)(D)(iv), replacing "All affiliation agreement" with "All affiliation agreements..."

HHSC received comments regarding proposed §355.8063 during the 30-day comment period, which included a public hearing on February 1, 2007, from Gjerset & Lorenz L.L.P., Shannon Medical Center, Texas Health Resources, Brown McCarroll L.L.P., Baylor Health Care System, Methodist Health Care System and the Texas Hospital Association. During the public hearing on February 1, 2007, HHSC also received comments from an individual representing the Texas Association of Public and Nonprofit Hospitals and an individual representing the Travis County Healthcare District. No comments were received on §355.8061. A summary of comments on §355.8063 and HHSC's responses follow.

Comment:

HHSC received comments from Baylor Health Care System, Gjerset & Lorenz, Methodist Health System, Texas Health Resources, and the Texas Association of Public and Nonprofit Hospitals addressing the language in subsection (t)(4)(F), which relates to repayment of CMS recoupments. The suggestions ranged from deleting subsection (t)(4)(F) entirely to deleting

only the indemnification provision, clause (ii), as it relates to the hospital district or state or local governmental entity. The commenters stated that clause (ii) conflicts with provisions in the Texas Constitution.

HHSC Response:

HHSC acknowledges the comment and agrees to delete the liability for indemnification of a private hospital's recoupment by the hospital district, or state or local governmental entity. HHSC has reworded subsection (t)(4)(F) to assign the risk associated with a recoupment to the individual hospital to which the overpayment finding is related or to the other hospitals that are members of the hospital district or state or local governmental entity affiliation group.

Comment:

HHSC received comments from Baylor Health Care System, Gjerset & Lorenz, Methodist Health System, and Texas Health Resources concerning language in subsection (t)(4) that expresses the purpose of the affiliations. As proposed the rule states that "[t]he purpose of the affiliation is that private hospitals will use the supplemental funds to provide additional indigent health care." The comments suggest that this language is in conflict with the U.S. Department of Health and Human Services Centers for Medicare and Medicaid Services' (CMS) restrictions on Medicaid funding.

HHSC Response:

HHSC acknowledges the comment and has modified the language in subsection (t)(4) to clarify that the purpose of the supplemental payments is to reimburse a hospital's unreimbursed Medicaid costs for services to the Medicaid population to ensure the continued viability of a community's Medicaid providers.

Comment:

HHSC received comments from Brown McCarroll, Gjerset & Lorenz, the Texas Association of Public and Nonprofit Hospitals, and the Travis County Healthcare District related to language in subsection (t)(4)(G)(iii). This subsection concerns the policy of processing one supplemental payment for services provided on or before August 31, 2006, for hospitals that: (a) submit the required documentation to HHSC no later than May 31, 2007; and (b) have intergovernmental transfers made to HHSC no later than December 1, 2007. The comments suggest that HHSC either make two supplemental payments before December 1, 2007, or allow hospitals to receive payments in installments for FY 2007 in FY 2008.

HHSC Response:

HHSC acknowledges the comment but believes that the extension to December 1, 2007, is adequate to allow hospital districts and state or local governmental entities time to transfer funds to take advantage of the retroactive funds available for services provided on or before August 31, 2006. No change was made in response to this comment.

Comment:

HHSC received comments from Baylor Health Care System, Methodist Health System, and Texas Health Resources on subsection (t)(4)(F), asking if participating hospitals would be invited to participate directly in appeals of any recoupment actions by CMS. The commenters note that the current language does not specify who will be the point of contact with CMS in such appeals. The comments reference the hospitals' rights of

due process under the 14th Amendment to the United States Constitution as the basis for allowing them the opportunity to appeal any recoupment action levied against a particular hospital by CMS.

HHSC Response:

HHSC believes the requested language is unnecessary and declines to add language addressing providers' involvement in appeals or reconsiderations or in preliminary discussions or negotiations with CMS related to recovery of overpayments. Federal law already addresses participation of interested third parties in appeals and reconsiderations of state disallowances. See 45 C.F.R. §16.16. No change was made in response to this comment.

Comment:

HHSC received comments from Baylor Health Care System, Methodist Health System, and Texas Health Resources related to subsection (t)(4)(F). The commenters noted that the language does not specify which hospitals receiving supplemental payments will be subject to recoupment. The comment stated that the current language would allow HHSC to recoup from a hospital other than the one for which the recoupment was levied.

HHSC Response:

HHSC feels the language currently proposed in subsection (t)(4)(F)(i), that "HHSC will recoup from the hospital against which the disallowance was directed;?" gives clear notice as to which hospital HHSC expects will refund the amount of a federal recoupment. No change was made in response to this comment.

Comment:

HHSC received comments from Shannon Medical Center related to subsection (t)(4)(G)(ii) asking that language be added to allow the hospital district or state or local entity to prescribe the distribution of its supplemental payment among their affiliated hospitals instead of the pro-rata methodology currently referenced in the rule. The commenters asked for additional discretion in distributing funds among affiliated hospitals, with the qualification that the prescribed distribution could not exceed an individual hospital's calculated UPL limit.

HHSC Response:

HHSC appreciates the commenters' concern but cannot delegate to hospital districts or any state or local entity the authority to prescribe the distribution of the supplemental payment among their affiliated hospitals. As the single state agency under section 1902(a)(5) of the Social Security Act, and 42 C.F.R. §431.10(e), HHSC is responsible for the administration and oversight of the medical assistance program in Texas and is prohibited by federal law from delegating, other than to its own officials, authority to exercise administrative discretion. HHSC believes that the decision on how to distribute the supplemental payment within the affiliated hospital groups is an exercise of administrative discretion and rests solely with the Commission. No change was made in response to this comment.

Comment:

HHSC received comments from Gjerset & Lorenz concerning subsection (t)(4)(G) that would add language requiring HHSC Rate Analysis staff to perform a year-end reconciliation calculation and make additional proportional supplemental payments based on each hospital's UPL limit if it did not exceed the aggregate private hospital UPL cap and if supported by an intergov-

ernmental transfer from its affiliated public partner.

HHSC Response:

HHSC acknowledges the comment and has included in subsection (t)(4)(G) language that directs HHSC to begin a yearly reconciliation of the Private Hospital UPL program beginning with dates of service from September 1, 2006 through August 31, 2007. The reconciliation must take into account the requirement that HHSC cannot reimburse private hospitals more than the CMS aggregate cap for the affected class of hospitals.

The amendments are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§355.8063. Reimbursement Methodology for Inpatient Hospital Services.

(a) Introduction. Except as otherwise specified in subsection (q) of this section, the Texas Medical Assistance Program (Medicaid) reimburses hospitals, except in-state children's hospitals, for covered inpatient hospital services using a prospective payment system. In-state children's hospitals are reimbursed for covered inpatient hospital services using the methodology described in subsection (o) of this section. For hospitals other than in-state children's hospitals, the Health and Human Services Commission (HHSC) or its designee groups hospitals into payment divisions using the average base year payment per case in each hospital after adjusting each hospital's base year payment per case by a case mix index and a cost-of-living index. The payment divisions are separated into \$100 increments. If a payment division has less than ten observations for Medicaid data, the HHSC or its designee considers that payment division to be statistically invalid. Hospitals within that payment division are placed into the nearest valid payment division.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Diagnosis-related group (DRG)--The taxonomy of diagnoses as defined in the Medicare DRG system or as otherwise specified by the HHSC or its designee.

(2) Case mix index--The hospital-specific average relative weight.

(3) Relative weight--The arithmetic mean of the dollars for a specific DRG divided by the arithmetic mean of the dollars for all cases.

(4) Standard dollar amount--The weighted mean base year payment for all hospitals in a payment division after adjusting each hospital's base year payment per case by a case mix index, and a cost-of-living index. The HHSC or its designee establishes a minimum standard dollar amount of \$1,600 and applies it to those hospitals whose standard dollar amount is less than the minimum. The HHSC or its designee applies cost-of-living indexes to the standard dollar amounts established for the base year to calculate standard dollar amounts for prospective years. A cost-of-living index is not applied to the minimum standard dollar amount.

(5) Base year--A 12-consecutive-month period of claims data selected by the HHSC or its designee as the basis for establishing the payment divisions, standard dollar amounts, and relative weights.

The HHSC or its designee selects a new base year at least every three years.

(6) Base year payment per case--The payment that would have been made to a hospital if the HHSC or its designee reimbursed the hospital under similar methods and procedures used in Title XVIII of the Social Security Act, as amended, effective October 1, 1982, by Public Law 97-248. In calculating the base year payment per case, the HHSC or its designee uses the interim rate established at tentative or final settlement, if applicable, of the most recent cost reporting period up to and including the cost reporting period associated with the base year.

(7) Interim rate--Total reimbursable Title XIX inpatient costs, as specified in paragraph (6) of this subsection, divided by total covered Title XIX inpatient charges per tentative or final cost reporting period. The interim rate established at tentative settlement includes incentive/penalty payments to the extent that they continue to be permitted by federal law and regulation and continue to be included on Title XVIII cost reports.

(8) New hospital--A facility that has been in operation under present and previous ownership for less than three years and that initially enrolls as a Title XIX provider after the current base year. A new hospital must have been substantially constructed within the five previous years from the effective date of the prospective rate period.

(9) Children's hospital--A hospital within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(10) Out-of-state children's hospital--A hospital outside of Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(c) Calculating relative weights and standard dollar amounts. The HHSC or its designee uses recent Texas claims data to calculate both the relative weights and standard dollar amounts. A relative weight is calculated for each DRG and applied to all payment divisions. A separate standard dollar amount is calculated for each payment division. Except for border hospitals with a Texas Medicaid provider number beginning with an H and out-of-state children's hospitals, the HHSC or its designee uses the overall arithmetic mean base year payment per case, including the cost of living update as specified in subsection (n) of this section, as the standard dollar amount to reimburse out-of-state hospitals. The overall arithmetic mean base year payment per case, including the cost of living update as specified in subsection (n) of this section, is also used as the standard dollar amount to reimburse military hospitals providing inpatient emergency services for admissions on or after October 1, 1993. The calculation of the standard dollar amount for out-of-state children's hospitals is described in subsection (r) of this section. Except for new hospitals, the overall arithmetic mean base year payment per case, including the cost of living update as specified in subsection (n) of this section, is also used as the standard dollar amount to reimburse hospitals that initially enroll as a Title XIX provider after the current base year. The standard dollar amount for new hospitals is the lesser of the overall arithmetic mean base year payment per case plus three percentile points, including the cost of living update as specified in subsection (n) of this section, or the hospital's average Medicaid cost per Medicaid discharge based on the tentative or final settlement, if applicable, of the hospital's first 12-month cost reporting period occurring after the hospital's enrollment as a Title XIX provider. In the event that the new hospital is a replacement facility for a hospital that is currently enrolled as a Title XIX provider, the hospital is reimbursed by using either the standard dollar amount of the existing provider or the standard dollar amount for new hospitals, whichever is greater. The use of the hospital's aver-

age Medicaid cost per Medicaid discharge, after adjusting for case-mix intensity, as its standard dollar amount is applied prospectively to the beginning of the next prospective year and is applicable only if the tentative or final settlement is completed and available at least 60 days before the beginning of the prospective year. The hospital's Medicaid costs are determined using similar methods and procedures used in Title XVIII of the Social Security Act, as amended, effective October 1, 1982, by Public Law 97-248. When two or more Title XIX participating providers merge, the HHSC or its designee combines the Medicaid inpatient costs, as described in this subsection, of each of the individual providers to calculate a standard dollar amount, effective at the start of the next prospective period, to be used to reimburse the merged entity. Acquisitions and buyouts do not result in a recalculation of the standard dollar amount of the acquired provider unless acquisitions or buyouts result in the purchased or acquired hospital becoming part of another Medicaid participating provider. When the HHSC or its designee determines that the HHSC or its designee has made an error that, if corrected, would result in the standard dollar amount of the provider for which the error was made changing to a new payment division, either higher or lower, the HHSC or its designee moves the provider into the correct payment division, and the HHSC or its designee reprocesses claims paid using the initial, incorrect standard dollar amount that was in effect for the current state fiscal year by using the existing standard dollar amount of the payment division in which the provider was moved. In the determination of the corrected payment division, the HHSC or its designee uses the relative weights that are currently in effect for the state fiscal year. The correction of this error condition only applies to the current state fiscal year payments. No corrections are made to payment rates for services provided in previous state fiscal years. If a specific DRG has less than ten observations for Medicaid data, the HHSC or its designee uses the corresponding Medicare relative weight, except for DRGs relating to organ transplants. Relative weights for organ transplant DRGs with less than ten observations may be developed using Medicaid-specific data. The relative weights include organ procurement costs for both solid and nonsolid organs. The HHSC or its designee makes no distinction between urban and rural hospitals and there is no federal/national portion within the payment.

(d) Add-on payments. There are no separate add-on payments. The HHSC or its designee:

(1) includes capital costs in the standard dollar amount for each payment division;

(2) includes the cost of indirect medical education in the standard dollar amount for each payment division;

(3) includes the cost of malpractice insurance in the standard dollar amount for each payment division; and

(4) includes return on equity in the standard dollar amount for each payment division.

(e) Calculating the payment amount. The HHSC or its designee reimburses each hospital for covered inpatient hospital services by multiplying the standard dollar amount established for the hospital's payment division by the appropriate relative weight. The patient's DRG classification is primarily based on the patient's principal diagnosis. The resulting amount is the payment amount to the hospital.

(f) Patient transfers. If a patient is transferred, the HHSC or its designee establishes payment amounts as specified in paragraphs (1) - (4) of this subsection. If appropriate, the HHSC or its designee manually reviews transfers for medical necessity and appropriate payment.

(1) If the patient is transferred to a skilled nursing facility or intermediate care facility, the HHSC or its designee pays the transferring hospital the total payment amount of the patient's DRG.

(2) If the patient is transferred to another hospital, the HHSC or its designee pays the receiving hospital the total payment amount of the patient's DRG. The HHSC or its designee pays the transferring hospital a DRG per diem. The DRG per diem is based on the following formula: $(\text{DRG relative weight} \times \text{standard dollar amount}) / \text{DRG mean length of stay (LOS)} \times \text{LOS}$. The LOS is the lesser of the DRG mean LOS, the claim LOS, or 30 days. The 30-day factor is not used in establishing a DRG per diem amount for a medically necessary stay of a recipient less than age one in a Title XIX participating hospital or a recipient less than age six in a disproportionate share hospital as defined by the HHSC.

(3) If the HHSC or its designee determines that the transferring hospital provided a greater amount of care than the receiving hospital, the HHSC or its designee reverses the payment amounts. The transferring hospital is paid the total payment amount of the patient's DRG and the receiving hospital is paid the DRG per diem.

(4) The HHSC or its designee makes multiple transfer payments by applying the per diem formula to the transferring hospitals and the total DRG payment amount to the discharging hospital.

(g) Split billing. The HHSC or its designee does not allow interim billings by providers. The hospital may bill the HHSC or its designee when the patient exceeds his 30-day inpatient hospital limit or is discharged. The HHSC or its designee bases payment on the diagnosis codes known at billing. The payment is final.

(h) Rebasing the standard dollar amounts. The HHSC or its designee rebases the standard dollar amount for each payment division at least every three years. HHSC will not rebase or recalculate the standard dollar amounts for each payment division for admissions during the period September 1, 2003 through August 31, 2007. The relative weights are recalibrated whenever the standard dollar amounts are recalculated. The standard dollar amounts are not rebased on an interim basis unless the HHSC or its designee determines that special circumstances warrant rebasing.

(i) Recalibrating the relative weights. The HHSC or its designee recalibrates the relative weights whenever the standard dollar amounts are rebased.

(j) Revising the diagnosis related groups. The HHSC or its designee parallels the taxonomy of diagnoses as defined in the Medicare DRG prospective payment system unless a revision is required based on Texas claims data or other factors as determined by the HHSC or its designee.

(k) Appeals.

(1) A hospital may appeal individual claims as specified in other HHSC rules. As specified in subparagraphs (A) - (C) of this paragraph, a hospital may also appeal mechanical, mathematical, and data entry errors in base year claims data and incorrectly computed subsequent adjustments to the hospital's base year claims data because of the base year's tentative or final settlement.

(A) If a hospital believes that the HHSC or its designee made a mechanical, mathematical, or data entry error in computing the hospital's base year claims data, the hospital may request a review of the disputed calculation by the HHSC or, at the HHSC direction, its designee. A hospital may not request a review if the disputed calculation is the result of the hospital's submittal of incorrect data or the result of the HHSC or its designee's application of an interim rate to the base year claims data derived from a cost reporting period occurring before the base year. Upon the provider hospital's request, the HHSC or its designee provides the applicable available data used in calculating the hospital's base year claims data to the provider hospital. The hospital must submit a specific written request for review and appropriate spe-

cific documentation supporting its contention that there has been a mechanical, mathematical, or data entry error to the HHSC or its designee. Except as specified in subparagraph (C) of this paragraph, the request must be submitted within 60 days after the hospital receives initial notification of its payment division and standard dollar amount. The HHSC or its designee conducts the review as quickly as possible and notifies the hospital of the results. If the hospital is dissatisfied with the results of the review, the hospital may request a formal hearing under the procedures, including the expedited processing provisions, except that, in the event of any conflict, the procedures contained in this section apply. Except as specified in subparagraph (C) of this paragraph, if the review or appeal is completed at least 60 days before the beginning of the next prospective year, any adjustment required after the completion of the review or appeal is applied to that next prospective year. If the review or appeal is not completed at least 60 days before the beginning of the next prospective year, any adjustment required after the completion of the review or appeal is applied only to the subsequent prospective year. The base year claims data used by the HHSC or its designee pending the review or appeal is the base year claims data established by the HHSC or its designee.

(B) If a hospital believes that the HHSC or its designee incorrectly computed subsequent adjustments to the hospital's base year claims data because of the base year's tentative or final settlement, the hospital may request a review of the disputed calculation related to the tentative or final settlement by the HHSC or, at the HHSC direction, its designee. The hospital's request may also include a request to review the tentative or final settlement. The hospital must submit a specific written request for review and appropriate specific documentation supporting its contention that the tentative or final settlement is incorrect to the HHSC or its designee. Except as specified in subparagraph (C) of this paragraph, the request must be submitted within 60 days after the hospital receives notification of a tentative or final settlement of the base year data. The HHSC or its designee conducts the review as quickly as possible and notifies the hospital of the results. If the hospital is dissatisfied with the results of the review, the hospital may request a formal hearing under the procedures, including the expedited processing provisions, contained in Chapter 1 of this title (relating to the Texas Board of Health), except that, in the event of any conflict, the procedures contained in this section apply. Except as specified in subparagraph (C) of this paragraph, if the review or appeal is completed at least 60 days before the beginning of the next prospective year, any adjustment required after the completion of the review or appeal is applied to that next prospective year. If the review or appeal is not completed at least 60 days before the beginning of the next prospective year, any adjustment required after the completion of the review or appeal is applied only to the subsequent prospective year. The interim rate applied to the base year claims data pending the review or appeal is the interim rate established by the HHSC or its designee.

(C) If a hospital believes that the HHSC or its designee incorrectly computed the hospital's 1985 base year claims data as specified in subparagraph (A) of this paragraph, the hospital may submit a specific written request for review and appropriate specific documentation supporting its contention within 60 days after the effective date of this section. If a hospital believes that the HHSC or its designee incorrectly computed the tentative or final settlement of the cost reporting period associated with the 1985 base year as specified in subparagraph (B) of this paragraph, the hospital may submit a specific written request for review and appropriate specific documentation supporting its contention within 60 days after the effective date of this section. The hospital must follow the process described in subparagraph (A) or (B) of this paragraph, as appropriate. If the review or appeal is completed by December 31, 1987, any adjustment required after the completion of the review or appeal is applied to the March 1, 1988, adjustment de-

scribed in subsection (n) of this section. If the review or appeal is not completed by December 31, 1987, any adjustment required after the completion of the review or appeal is applied to the next prospective year.

(2) A hospital may not appeal the prospective payment methodology used by the HHSC or its designee, including:

- (A) the payment division methodologies;
- (B) the DRGs established;
- (C) the methodology for classifying hospital discharges within the DRGs;
- (D) the relative weights assigned to the DRGs; and
- (E) the amount of payment as being inadequate to cover costs.

(l) Cost reports. Each hospital must submit a cost report at periodic intervals as prescribed by Medicare or as otherwise prescribed by the HHSC or its designee. The HHSC or its designee uses data from these reports in rebasing years, in making adjustments as described in subsections (n) and (q) of this section, and in completing cost settlements for children's hospitals.

(m) Cost settlements. If a hospital has already begun its fiscal year on September 1, 1986, cost settlement for that portion of the hospital's fiscal year which occurs before September 1, 1986, is based on reimbursement for covered inpatient hospital services under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248. Except as otherwise specified in subsection (q) of this section, there are no cost settlements for services provided to recipients admitted as inpatients to hospitals reimbursed under the prospective payment system on or after the implementation date of the prospective payment system.

(n) Adjustments to base year claims data.

(1) Beginning with 1985 hospital fiscal year cost reporting periods, the HHSC or its designee adjusts each hospital's base year claims data and resulting payment division and standard dollar amount to reflect the interim rate established at tentative and final settlement, if applicable, of the cost reporting period associated with the base year. The adjustments are applied only to claims data for months within the base year that coincide with months within the hospital's cost reporting period. The claims data for months within the base year that do not coincide with months within the hospital's cost reporting period remain unchanged until the tentative or final settlement of the cost reporting period containing those months has been completed. The adjustments are applied to the next prospective year beginning September 1, 1988, except as specified in subparagraphs (A), (B), and (C) of this paragraph.

(A) If the tentative or final settlement is not completed and available at least 60 days before the beginning of the next prospective year, any adjustment required because of the settlement is applied to the subsequent prospective year.

(B) If a review or appeal of a tentative or final settlement is not completed at least 60 days before the beginning of the next prospective year, the interim rate applied to the claims data on which the hospital's payment division and standard dollar amount are established is the interim rate established at tentative or final settlement by the department or its designee. Any adjustment required after the completion of the review or appeal is applied only to the subsequent prospective year.

(C) The HHSC or its designee makes a March 1, 1988, adjustment.

(2) The HHSC or its designee updates the standard dollar amount each year for each payment division by applying a cost-of-living index to the standard dollar amount established for the base year. The cost-of-living index for state fiscal years 2003, 2004, 2005, 2006 and 2007 will not be applied to the standard dollar amount for admissions during the period September 1, 2003 through August 31, 2007. The index used to update the standard dollar amounts is the greater of:

(A) the Health Care Financing Administration's (HCFA) Market Basket Forecast (PPS Hospital Input Price Index) based on the report issued for the federal fiscal year quarter ending in March of each year, adjusted for the state fiscal year by summing one-third of the annual forecasted rate of the index for the current calendar year and two-thirds of the annual forecasted rate of the index for the next calendar year; or

(B) an amount determined by selecting the lesser of the following two measures:

(i) the change in total charges per case for the latest year available compared to total charges per case for the previous year; or

(ii) the change in the Texas medical consumer price index-urban (that is, the arithmetic mean of the Houston and Dallas/Fort Worth medical consumer price indices for urban consumers) for the latest year available compared to the Texas medical consumer price index-urban for the previous year.

(o) Reimbursement to in-state children's hospitals and free-standing psychiatric facilities. The HHSC or its designee reimburses in-state children's hospitals and freestanding psychiatric facilities under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248, Tax Equity and Fiscal Responsibility Act (TEFRA) except for the cost of direct graduate medical education (DGME). For cost reporting periods beginning on or after September 1, 2003, children's hospitals with allowable DGME costs as determined under TEFRA principles will receive a pro rata share of their annual TEFRA DGME cost based on appropriations or allocations from appropriations made specifically for this purpose. The amount and frequency of interim payments will also be subject to the availability of appropriations made specifically for this purpose. Interim payments are subject to settlement at both tentative and final audit of a hospital's cost report. The HHSC or its designee establishes target rates and stipulates payments per discharge, incentives, and percentage of payments. The HHSC or its designee uses each hospital's 1987 final audited cost reporting period (fiscal year ending during calendar year 1987) as its target base period. The target base period for hospitals recognized by Medicare as children's hospitals after the implementation of this subsection is the hospital's first full 12-month cost reporting period occurring after its recognition by Medicare. The HHSC or its designee annually increases each hospital's target amount for the target base period by the cost-of-living index described in subsection (n) of this section. The HHSC or its designee selects a new target base period at least every three years. The HHSC or its designee bases interim payments to each hospital upon the interim rate derived from the hospital's most recent tentative or final Medicaid cost report settlement. If a Title XIX participating hospital is subsequently recognized by Medicare as a children's hospital after the implementation of this subsection, the hospital must submit written notification to the HHSC or its designee and include adequate documentation and claims data. Upon receipt of the written notification from the hospital, the HHSC or its designee reserves the right to take 90 days to convert the hospital's reimbursement to the reimbursement methodology described in this subsection.

(p) Day and cost outliers. Effective for inpatient hospital services provided on or after July 1, 1991, the HHSC or its designee pays day or cost outliers for medically necessary inpatient services provided to clients less than age one in all Title XIX participating hospitals and clients less than age six in disproportionate share hospitals, as defined by the HHSC, that are reimbursed under the prospective payment system. For purposes of outlier payment adjustments, disproportionate share hospitals are defined as those hospitals identified by the HHSC during the previous state fiscal year as disproportionate share hospitals. If an admission qualifies for both a day and a cost outlier, only the outlier resulting in the highest payment to the hospital is paid. (Note: This subsection does not address reimbursement for the provision of other necessary inpatient hospital services under the Early and Periodic Screening, Diagnosis, and Treatment Program, as required by the Omnibus Budget and Reconciliation Act of 1989.)

(1) To establish day outliers, the HHSC or its designee first removes from the current base year data those admissions whose actual lengths of stay are greater than or equal to plus or minus three standard deviations from the arithmetic mean length of stay for each DRG. The HHSC or its designee then recomputes the arithmetic mean length of stay and the standard deviations for each DRG. Inpatient days, which exceed two standard deviations beyond the arithmetic mean length of stay for the DRG are eligible for a day outlier. Payment is based on 70% of a per diem amount of a full DRG payment. The per diem amount is established by dividing the full DRG payment amount by the arithmetic mean length of stay for the DRG.

(2) To establish cost outliers, the HHSC or its designee first determines what the amount of reimbursement for the admission would have been if the HHSC or its designee reimbursed the hospital under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248, Tax Equity and Fiscal Responsibility Act (TEFRA). The HHSC or its designee then determines the outlier threshold by using the greater of the full DRG payment amount multiplied by 1.5 or an amount determined by selecting the lesser of the universe mean of the current base year data multiplied by 11.14, or the hospital's standard dollar amount multiplied by 11.14. The hospital's standard dollar amount is the amount that the HHSC or its designee uses to reimburse the hospital under the prospective payment system. The outlier threshold is subtracted from the amount of reimbursement for the admission established under the TEFRA principles. The HHSC or its designee multiplies any remainder by 70% to determine the actual amount of the cost outlier payment.

(3) If a recipient less than age one is admitted to and remains in a hospital past his or her first birthday, medically necessary inpatient days and hospital charges after the child reaches age one are included in calculating the amount of any day or cost outlier payment.

(q) Hospitals with 100 or fewer licensed beds and certain hospitals with more than 100 licensed beds. The policies in this subsection apply only to hospital fiscal years beginning on or after September 1, 1989 for hospitals with 100 or fewer licensed beds at the beginning of the hospital's fiscal year or hospital fiscal years beginning on or after September 1, 2003 for hospitals with more than 100 licensed beds at the beginning of the hospital's fiscal year, located in a county that is not in a metropolitan statistical area (MSA) as defined by the U.S. Office of Management and Budget (OMB) and designated by the Center for Medicare & Medicaid Services as a Sole Community Provider (SCH) or Rural Referral Center RCC. At tentative cost settlement of the hospital's fiscal year (with subsequent adjustment at final cost settlement, if applicable), the HHSC or its designee determines what the amount of reimbursement during the fiscal year would have been if the HHSC or its designee reimbursed the hospital under similar methods and proce-

dures used in Title XVIII of the Social Security Act, as amended, effective October 1, 1982, by Public Law 97-248, Tax Equity and Fiscal Responsibility Act (TEFRA). This determination is made without imposing a TEFRA cap. If the amount of reimbursement under the TEFRA principles is greater than the amount of reimbursement received by the hospital under the prospective payment system, the HHSC or its designee reimburses the difference to the hospital.

(r) Reimbursement to out-of-state children's hospitals. For admissions on or after September 1, 1991, the standard dollar amount for out-of-state children's hospitals is calculated as specified in this subsection. The HHSC or its designee calculates the overall average cost per discharge for in-state children's hospitals based on tentative or final settlement of cost reporting periods ending in calendar year 1990. The overall average cost per discharge is adjusted for intensity of service by dividing it by the average relative weight for all admissions from in-state children's hospitals during state fiscal year 1990 (September 1, 1989 through August 31, 1990). The adjusted cost per discharge is updated each year by applying the cost-of-living index described in subsection (n) of this section. The resulting product is the standard dollar amount to be used for payment of claims as described in subsection (e) of this section. The HHSC or its designee selects a new cost reporting period and admissions period from the in-state children's hospitals at least every three years for the purpose of calculating the standard dollar amount for out-of-state children's hospitals.

(s) Reimbursement of inpatient direct graduate medical education (GME) costs. The Medicaid allowable inpatient direct graduate medical education cost, as specified under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248, is calculated for each hospital having inpatient direct graduate medical education costs on its tentative or final audited cost report. Those inpatient direct medical education costs are removed from the calculation of the interim rate described in subsection (b)(7) of this section and not used in the calculation of the provider's standard dollar amount described in subsection (c) of this section. Those allowable inpatient direct graduate medical education costs for services delivered to Medicaid eligible patients with inpatient admission dates on or after September 1, 1997, will be subject to the cost determination and settlement provisions as described in this subsection. No Medicaid inpatient direct graduate medical education cost settlement provisions are applied to inpatient hospital admissions prior to September 1, 1997. For cost reporting periods beginning on or after September 1, 2003, providers with Medicaid allowable direct graduate medical education costs as described in this subsection will receive a pro rata share of their annual GME cost based on appropriations or allocations from appropriations made specifically for this purpose. The amount and frequency of interim payments will also be subject to the availability of appropriations made specifically for this purpose. Interim payments are subject to settlement at both tentative and final audit of a provider's cost report.

(t) Non-State Owned Hospital Supplemental Inpatient Payments. Notwithstanding other provisions of this chapter, supplemental payments will be made each state fiscal year in accordance with this subsection to eligible hospitals that serve high volumes of Medicaid and uninsured patients.

(1) Supplemental payments are available under this subsection for inpatient hospital services provided by a publicly-owned hospital or hospital affiliated with a hospital district in Bexar, Dallas, Ector, El Paso, Harris, Lubbock, Nueces, Midland, Potter, Randall, Tarrant, and Travis counties. Supplemental payments will be made for inpatient services on or after July 6, 2001, for Bexar, Dallas, Ector, El Paso, Harris, Lubbock, Nueces, Tarrant, and Travis counties. Supplemental payments will be made for inpatient services on or after Febru-

ary 7, 2004, for Midland County. Supplemental payments will be made for inpatient services on or after May 29, 2004 for Potter and Randall counties.

(2) State funding for supplemental payments authorized under this paragraph will be limited to and obtained through intergovernmental transfers of local or hospital district funds. The supplemental payments described in this paragraph will be made in accordance with the applicable regulations regarding the Medicaid upper limit provisions codified at 42 C.F.R. §447.272.

(3) In each county listed in paragraph (1) of this subsection, the publicly-owned hospital or hospital affiliated with a hospital district that incurs the greatest amount of cost for providing services to Medicaid and uninsured patients, will be eligible to receive supplemental high volume payments. The supplemental payments authorized under this paragraph are subject to the following limits:

(A) In each state fiscal year the amount of any inpatient supplemental payments and outpatient supplemental payments may not exceed the hospital's "hospital specific limit," as determined under §355.8065(f)(2)(E) of this chapter (relating to Reimbursement to Disproportionate Share Hospitals (DSH)) for DSH hospitals; and

(B) The amount of inpatient supplemental payments and fee-for-service Medicaid inpatient payments the hospital receives in a state fiscal year may not exceed Medicaid inpatient billed charges for inpatient services provided by the hospital to fee-for-service Medicaid recipients in accordance with 42 CFR §447.271.

(4) Notwithstanding the provisions of paragraphs (1) - (3) of this subsection, a privately-operated hospital that executes an indigent care affiliation agreement (as defined in this subsection) with a hospital district or state or local governmental entity is eligible to receive supplemental payments under this paragraph. The purpose of the affiliation is to pay for unreimbursed care to the Medicaid population to ensure the continued viability of the communities' Medicaid providers.

(A) Supplemental payments will be made for inpatient services on or after June 11, 2005, for eligible hospitals in Hidalgo, Maverick, Montgomery, Travis, Bexar, and Webb counties. Supplemental payments will be made for inpatient services on or after November 12, 2005, for eligible hospitals in all other counties in the State of Texas.

(B) A hospital that is eligible to receive supplemental payments under this paragraph must provide a copy of the fully executed indigent care affiliation agreement to HHSC prior to payment of any supplemental funds under this paragraph.

(C) An eligible hospital must certify, on a form prescribed by HHSC and prior to payment of any supplemental funds under this paragraph, the following:

(i) No part of any supplemental payment paid to the hospital under this paragraph will be returned or reimbursed to the hospital district or state or local governmental entity;

(ii) No part of any supplemental payment paid to the hospital under this paragraph will be used to pay a contingent fee, consulting fee, or legal fee associated with the hospital's receipt of the supplemental funds; and

(iii) The person signing the certification on behalf of the hospital is legally authorized to bind the hospital and to certify the matters described in the certification.

(D) A hospital district or state or local governmental entity must certify, on a form prescribed by HHSC and prior to payment of any supplemental funds under this paragraph, the following:

(i) The hospital district or state or local governmental entity has not received and has no agreement to receive, any portion of the funds paid to an eligible hospital that has executed an affiliation agreement with the hospital district or state or local governmental entity;

(ii) The hospital district or state or local governmental entity has not entered into a contingent fee arrangement related to the hospital district's or state or local governmental entity's participation in the supplemental payment program authorized under this paragraph;

(iii) The hospital district or state or local governmental entity is authorized to participate in the supplemental payment program authorized under this paragraph pursuant to a vote of the hospital district's or state or local governmental entity's governing body in a public meeting preceded by public notice published in accordance with the hospital district's or state or local governmental entity's usual and customary practices or the Texas Open Meetings Act, as applicable;

(iv) All affiliation agreements, consulting agreements, or legal services agreements executed by the hospital district or state or local governmental entity related to the hospital district's or state or local governmental entity's participation in the supplemental payment program authorized under this paragraph are available for public inspection upon request.

(E) Beginning August 31, 2008, each participating hospital and hospital district or state or local governmental entity must submit a fully executed indigent care affiliation agreement as well as certification forms on or before August 31st of each fiscal year to be eligible to receive supplemental payments under this paragraph during the following fiscal year.

(F) If the federal Centers for Medicare and Medicaid Services (CMS), the United States Department of Health and Human Services, or other responsible legal authority recoups federal financial participation related to an eligible hospital's receipt and/or use of supplemental payments authorized under this paragraph, HHSC may recoup an amount equivalent to the amount of supplemental payments recouped by CMS. Supplemental payments under this paragraph may be subject to any adjustments for payments made in error, including, without limitation, adjustments under §371.1703 of this title (relating to recovery of overpayments), 42 C.F.R. part 455, and chapter 403, Texas Government Code. HHSC will send a notice of recoupment to the hospital and will recoup from any current or future Medicaid payments as follows:

(i) HHSC will recoup from the hospital against which the disallowance was directed;

(ii) If, within 30 days of the hospital's receipt of HHSC's written notice of recoupment, the hospital has not paid the full amount of the recoupment or entered into an agreement, in writing, with HHSC, HHSC may withhold any or all Medicaid payments from the hospital until such time as HHSC has recovered an amount equal to the hospital's disallowance. If HHSC determines that recovery through a withhold is not feasible, HHSC may recover the amount of the CMS recoupment from the other affiliated hospitals that are a party to the same indigent care affiliation under this paragraph through a withhold of any or all Medicaid payments until such time as HHSC has recovered an amount equal to the hospital's disallowance unless the recoupment is prohibited by law.

(G) Funding of supplemental payments under this paragraph shall be disbursed as follows:

(i) Supplemental payments available under this paragraph shall be payable to a hospital affiliated with a hospital dis-

trict or state or local governmental entity in proportion to the amount transferred by the hospital district or state or local governmental entity affiliated with the private hospital, subject to legislative appropriation. Such supplemental payments will be based on calculations made by HHSC and will be made quarterly, beginning April 1, 2007.

(ii) If a hospital district or state or local governmental entity does not transfer to HHSC sufficient funding for the time period specified to generate the full amount allowable under this paragraph, each hospital affiliated with that hospital district or state or local governmental entity will receive a portion of the supplemental payment under paragraph (5) of this subsection based on that hospital's percentage of the full entitlement for all hospitals affiliated with that hospital district or state or local governmental entity.

(iii) HHSC will issue one supplemental payment for a hospital for inpatient services the hospital provided on or before August 31, 2006, if the hospital meets the criteria of subparagraphs (A) - (C) of this paragraph no later than May 31, 2007, and if a sufficient amount of funds (as determined by HHSC) are transferred to HHSC to support the one-time supplemental payment no later than December 1, 2007. A hospital district or state or local governmental entity must notify HHSC in a manner prescribed by HHSC of the date it intends to transfer funds related to the supplement payment authorized under this subparagraph. The supplemental payment will be processed for each participating hospital based on the amount of funds transferred to HHSC up to the calculated maximum payment for the applicable retroactive time period. A hospital that satisfies the criteria of subparagraphs (A) - (C) of this paragraph after May 31, 2007, will not be eligible for the supplemental payment authorized under this subparagraph but will be eligible to receive regular supplemental payments under paragraph (5) of this subsection. If the full amount of the calculated intergovernmental transfer (IGT) transfer is not made by the transfer deadlines specified by HHSC, the supplemental payment for that time period will be calculated based on the amount of the funds transferred. Regular quarterly supplemental payments for state fiscal year 2007 for which IGT funds are received will be made, beginning in April 2007, to each participating hospital for which a copy of the fully executed indigent care affiliation agreement, as well as any required certification forms, have been timely received.

(iv) Annual retroactive supplemental payments will be processed once for each state fiscal year, beginning with state fiscal year 2007, in September of the following calendar year (September 2008 for state fiscal year 2007) provided HHSC determines there is sufficient room available for funding under the applicable aggregate upper payment limit for private hospitals. Hospital districts or state or local governmental entities must notify HHSC Rate Analysis in a manner prescribed by HHSC if they intend to transfer funds related to the annual retroactive payments. If HHSC determines that the retroactive funding claimed pursuant to this clause will exceed the applicable aggregate upper payment limit for private hospitals, HHSC will reduce the amount of the transfer for the retroactive payment under this clause proportionately for each participating private hospital in an amount sufficient to ensure compliance with the applicable aggregate upper payment limit. If the retroactive supplemental payment calculation results in the verification that a specific hospital or hospitals were overpaid for the retroactive time period, HHSC will initiate the same process as outlined in subparagraph (F)(i) - (ii) of this paragraph to recover the amount of the overpayment.

(H) State funding for supplemental payments authorized under this paragraph will be limited to and obtained through intergovernmental transfers of local governmental entity or hospital district funds or transfer of State General Revenue. The supplemental payments described in this subsection will be made in accordance

with the applicable regulations regarding the Medicaid upper limit provisions codified at 42 C.F.R. §447.272.

(5) An eligible hospital under this subsection will receive quarterly supplemental payments. The quarterly payments will be limited to one-fourth of the lesser of:

(A) The difference between the hospital's Medicaid inpatient billed charges and Medicaid payments the hospital receives for services provided to fee-for-service Medicaid recipients. Medicaid billed charges and payments will be based on a twelve consecutive-month period of fee-for-service claims data selected by HHSC; or

(B) The difference between the hospital's "hospital specific limit," as determined under §355.8065(f)(2)(E) of this chapter relating to Reimbursement to Disproportionate Share Hospitals (DSH)) for DSH hospitals and the hospital's DSH payments as determined by the most recently finalized DSH reporting period.

(6) For purposes of calculating the "hospital specific limit" in paragraph (5)(B) of this subsection, the "cost of services to uninsured patients," as defined by §355.8065(b)(5) of this chapter and "Medicaid shortfall," as defined by §355.8065(b)(16) of this chapter, will be adjusted as follows:

(A) The amount of Medicaid payments (including inpatient and outpatient supplemental payments) that exceed Medicaid cost will be subtracted from the "Medicaid shortfall."

(B) The amount of the "Medicaid shortfall," as adjusted in accordance with subparagraph (A) of this paragraph, will be subtracted from the "cost of services to uninsured patients" to ensure that, during any state fiscal year, a hospital does not receive more in total Medicaid payments (inpatient and outpatient rate payments, graduate medical education payments, supplemental payments and disproportionate share hospital payments) than its cost of serving Medicaid patients and patients with no health insurance.

(u) High-volume payments recognize the higher medical assistance costs and indigent care cost of hospitals that treat higher levels of low-income and indigent patients. Eligible hospitals are defined as non-state owned or operated, non-public, hospitals located in urban counties with Medicaid days greater than 160% of the mean Medicaid days. High-volume payments not exceeding \$26,400,000 shall be allocated in proportion to uncompensated care loss for eligible hospitals participating in the current year DSH program. Payments under this provision will be made annually based on current year finalized Medicaid DSH claims data. The state shall adjust the high volume payments in accordance with applicable Medicaid charge upper limit regulations. Any adjustment shall be made on a proportional basis in order to allow eligible hospitals to participate to the fullest extent possible within the limits on disproportionate share hospital payments. HHSC shall use current year DSH data to determine Medicaid days. County population will be based on the 2000 United States census.

(v) State Owned Hospital Supplemental Inpatient Payments. Notwithstanding other provisions of this attachment, supplemental payments will be made each state fiscal year in accordance with this subsection to state government-owned or operated hospitals for inpatient services provided to Medicaid patients.

(1) Supplemental payments are available under this subsection for inpatient hospital services provided by state government-owned or operated hospitals on or after December 13, 2003. To qualify for a supplemental payment, the hospital must be owned or operated by the state of Texas.

(2) The aggregate supplemental payment amount will be the annual difference between the aggregate upper payment limit and

the inpatient fee-for-service Medicaid payments made to the state government-owned or operated hospitals under this attachment. The aggregate upper payment limit will be calculated, based on Medicare payment principles and in accordance with the federal upper limit regulations at 42 CFR §447.272, using the most recent cost report data available.

(3) The amount of the supplemental payment made to each state government-owned or operated hospital will be determined by:

(A) dividing each hospital's fee-for-service Medicaid payments by the sum of the Medicaid fee-for-service payments of all state government-owned or operated hospitals;

(B) multiplying the percentage calculated in subparagraph (A) of this paragraph by the aggregate supplemental payment calculated in paragraph (2) of this subsection.

(4) Supplemental payments determined under this subsection will be calculated annually and paid quarterly.

(5) Supplemental payments made under this subsection when combined with other inpatient payments made under this section shall not exceed the maximum amounts allowable under applicable federal regulations at 42 CFR §447.271.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 12, 2007.

TRD-200700938

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Effective date: April 1, 2007

Proposal publication date: January 19, 2007

For further information, please call: (512) 424-6900



CHAPTER 358. MEDICAID ELIGIBILITY

SUBCHAPTER G. APPLICATION FOR MEDICAID

1 TAC §358.610

Pursuant to the federal Deficit Reduction Act of 2005 (DRA), PL 109-171, the Texas Health and Human Services Commission (HHSC) adopts amendments to §358.610 relating to Medicaid Coverage without changes to the proposed text as published in the January 5, 2007, issue of the *Texas Register* (32 TexReg 12) and will not be republished.

These amendments are adopted to incorporate the mandatory provision under section 1902(a)(10)(A)(i)(II) of the Social Security Act (SSA) as amended by the Deficit Reduction Act of 2005, Section 6065 of Public Law 109-171.

Background and Justification

On February 8, 2006, the DRA was signed into law. The DRA made changes to certain Medicaid eligibility provisions of the SSA, necessitating the change to the Texas rules. HHSC proposes to amend its Medicaid Eligibility chapter by amending a rule in Title 1, Subchapter G to, Chapter 358 of the TAC.

Rule Change Summary

Currently in Texas, Medicaid eligibility for Supplemental Security Income (SSI) recipients is effective the month of application or the first month of eligibility. Where retroactive eligibility is applicable, such eligibility is counted backwards for up to three months from the first month of SSI payment. SSI payment begins the month after application for SSI or the first month after eligibility criteria are met to receive SSI. The first month of Medicaid eligibility in Texas is referred to as the "gap" month. States have not been required to begin Medicaid eligibility for the "gap" month.

Section 6065 of P.L. 109-171 eliminates the "gap" month by amending section 1902(a)(10)(A)(i)(II) of the SSA to deem individuals under 21 found eligible for and receiving SSI payment to be receiving SSI without regard to the delay imposed under section 1611(c)(7) of the SSA. Therefore, an SSI recipient under age 21 becomes Medicaid eligible in the month before the first month of SSI payment, rather than the month of SSI payment. Effective February 8, 2007, SSI recipients must be eligible for Medicaid beginning with the "gap" month. When computing retroactive Medicaid eligibility, SSI recipients under 21 will have retroactive Medicaid eligibility counted backwards for up to three months from the "gap" month rather than the first month of SSI payment.

In all other respects, retroactive Medicaid eligibility will be computed in accordance with the policy the State employs for all other SSI recipients.

This provision is effective for all SSI applications filed on behalf of children on or after February 8, 2007. However, the full effect of section 6065 will not be realized until all months of potential Medicaid eligibility, including any retroactive months under section 1902(a)(34), is after February 8, 2007. Until that time, rules in effect before enactment of the Deficit Reduction Act of 2005 for computing retroactive Medicaid eligibility will continue to be applicable for Medicaid recipients under age 21 who also receive SSI.

HHSC received no comments on the amendments. The Medical Care Advisory Committee voted to support these amendments at its November 9, 2006 meeting. The HHSC Council voted to support these amendments at its November 30, 2006 meeting.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 12, 2007.

TRD-200700939

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

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Proposal publication date: January 5, 2007

For further information, please call: (512) 424-6900



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 6. ENERGY ASSISTANCE PROGRAMS

SUBCHAPTER A. DEPARTMENT OF ENERGY WEATHERIZATION ASSISTANCE PROGRAM (DOE-WAP)

10 TAC §§6.1 - 6.21

The Texas Department of Housing and Community Affairs (the Department) adopts the proposed new §§6.1 - 6.21, concerning the Department of Energy Weatherization Assistance Program (DOE-WAP) Rules, as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7816). Sections 6.3, 6.5, 6.6, 6.8, 6.13, 6.14, 6.16, 6.19, 6.20, and 6.21 are adopted with changes. Sections 6.1, 6.2, 6.4, 6.7, 6.9, 6.10, 6.11, 6.12, 6.15, 6.17, and 6.18 are adopted without changes and will not be republished.

These sections that are adopted with changes are due to public comment. The scope of the public comment concerning the Department of Energy Weatherization Assistance Program (DOE-WAP) pertains to the following sections:

SUMMARY OF COMMENTS RECEIVED UPON PUBLICATION OF THE PROPOSED RULES IN THE TEXAS REGISTER AND COMMENTS PROVIDED AT PUBLIC HEARINGS HELD BY THE DEPARTMENT ON ITEMS THAT RELATE DIRECTLY TO THE DEPARTMENT OF ENERGY WEATHERIZATION ASSISTANCE PROGRAM (DOE-WAP).

§6.3(d) Distribution of Funds Formula (1)

Comments expressed the following: "Additional funds... may be allocated... based upon documented need." BAD--leads to "sweetheart" deals! Should be by formula, unless subrecipient is under-performing at time of distribution.

Department Response: The initial program funds will be distributed based on the allocation formula. This section (d) refers to subrecipients that are under-performing and how additional funds will be allocated. All of the allocation deobligations or re-obligations will be reviewed, documented, and a recommendation made for Executive Team review.

Board Response: Accepted Department's recommendation.

§6.5(a) Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria (1)

Comments expressed the following: "The subrecipients shall establish eligibility level at no less than 125%..." means subrecipient could establish eligibility level at 150% or more! Should read "Client household income shall be no more than 125%..." Subrecipient should not be able to establish eligibility levels.

Department Response: Department recommends for this to be revised to read as follows: "The subrecipients shall establish the client eligibility level at 125% of the federal poverty level in effect at the time the client makes an application for services. Dwelling units that contain household members who receive SSDI only are not automatically eligible."

Board Response: Accepted Department's recommendation.

§6.5(e) Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria (1)

Comments expressed the following: Second sentence, "In the case of migrant or seasonal workers..." Please revise to read "...migrant, seasonal, part-time, temporary or self-employed workers..." None of these receive regular weekly or monthly pay.

Department Response: Department recommends for this to be revised to read as follows: "In the case of migrant, seasonal, part-time, temporary, or self-employed workers..."

Board Response: Accepted Department's recommendation.

§6.6(a) Eligibility for Multifamily Dwelling Units (1)

Comments expressed the following: "Dwelling units shall be eligible... who receive SSDI only are not automatically eligible." Why is this in Multi-family section but not in §6.5? Is there a difference between single-family units and multi-family units in this regard?

Department Response: Department recommends adding inclusion of identical language for single family residences.

Board Response: Accepted Department's recommendation.

§6.8(b) - (g) Subrecipient Requirements for Appeals Process for Applicants (1)

Comments expressed the following: This process is a complete waste of time when the denial is because the household income exceeds the allowable limit, the unit has been previously weatherized since the DOE-established date, mold or other health & safety issues exist (Ref. §6.12 and §6.16(b)), or proposed work did not meet TDHCA Audit SIR requirements.

Suggest making these "other than" cases, and also allowing an initial review of the situation and uphold or deny decision by someone who was not involved in the original decision, with a written explanation to the applicant. Then, if applicant is not satisfied, require the committee and hearing process.

Department Response: Department recommends adding the following sentence to §6.8(a) after the first sentence: If the denial is for any reason other than DOE reweatherization, as specified in 10 CFR 440, the subrecipient will notify the applicant of the adverse determination.

Board Response: Accepted Department's recommendation.

§6.8(i) Subrecipient Requirements for Appeals Process for Applicants (1)

Comments expressed the following: "...the funds should remain encumbered..." What funds?

Department Response: Department recommends changing (i) to read as follows: "If client appeals to the Department, the subrecipient must retain the maximum allowable cost per unit until the Department renders a decision."

Board Response: Accepted Department's recommendation.

§6.13 Client Education (1)

Comments expressed the following: "These activities are paid with... and the subrecipients' administrative funds." Why not program support funds? That's what client education is!

Department Response: Department recommends changing the last sentence to read as follows: "These activities...and the subrecipients' program support funds."

Board Response: Accepted Department's recommendation.

§6.14 Adjusted Average Expenditure Per Dwelling Unit (1)

Comments expressed the following: "Expenditures... under DOE WAP funding or other resources ... shall not exceed the adjusted average expenditure limit ... per dwelling unit as provided by DOE." UNACCEPTABLE! Why should leveraged funds, ie: USDA, utilities, landlord payments, etc., all have to fit within the DOE maximum average unit cost? And what about DOE + LIHEAP piggy-backed units? Please delete "or other resources."

Department Response: Department recommends changing the first sentence to read as follows: "Expenditures of financial assistance provided under DOE-WAP funding for the weatherization services for labor, weatherization ..."

Board Response: Accepted Department's recommendation.

§6.16(a) Health and Safety (1)

Comments expressed the following: First sentence is grammatically incorrect. Suggest deletion of "the WAP is."

Department Response: Department recommends changing the first sentence of (a) to the following: Subrecipients shall provide weatherization services with the primary goal of energy efficiency.

Board Response: Accepted Department's recommendation.

§6.16(c) Health and Safety (1)

Comments expressed the following: "The department has determined that repair/replacement windows that (which?) do not rank with a (an?) SIR of one or greater ... may be repaired/replaced if deemed necessary." GREAT! We need this, but not if it just applies to broken panes. Also, what if window panes are broken between assessment and subcontractor work? Do we still have to make a trip to take a picture?

Department Response: Department recommends the first sentence to read as follows: "The Department has determined that repair/replacement windows which do not rank with a SIR of one or greater on the audit may be repaired/replaced, if deemed a threat to health and safety."

Board Response: Accepted Department's recommendation.

§6.16(d) Health and Safety (1)

Comments expressed the following: "Documentation must be submitted to ... program officer for approval." Before doing the work? In every case? This is a very common situation, and it is not feasible to wait for submission and approval. Why isn't "a clear, comprehensible photo" in the file enough?

Expressed disagreement that the absence of deadbolts does not constitute a hazardous health and safety condition, considering where a majority of our clients live, and dead bolts are required, by Texas law, on all rental unit doors.

Department Response: Department recommends changing the last sentence in this section to read as follows: The absence of deadbolt locks does not constitute a hazardous health and safety condition by itself.

The law pertains to responsibilities of the Landlord.

Board Response: Accepted Department's recommendation.

§6.19(a) Payments to Contractors and Vendors (1)

Comments expressed the following: Sentence is grammatically incorrect and incoherent. What does it mean, and why does it refer to LIHEAP recipients?

Department Response: Department recommends to change the first two sentences to read as follows: (a) A vendor agreement...via the subrecipient. The vendor agreement shall contain assurances as to fair billing..."

Board Response: Accepted Department's recommendation.

§6.20(c) State Contract Purchases (1)

Comments expressed the following: "Unless a local vendor ... that (who?) will provide ... at the same price or less, subrecipients shall ..." There should be a threshold or minimum quantity so we aren't required to purchase individual items, such as large window air conditioners or water heaters, for separate, unusually remote locations, every time they are needed. In many cases, using a local vendor at a higher price is the most efficient method, especially considering warranty service or replacement. Also, why is "LIHEAP funds" referenced? Will TDHCA provide a list of applicable equipment and materials and associated vendors available thru the State Purchasing Program?

Department Response: Department recommends changing the second sentence to read as follows: "Unless a local vendor...competitive solicitation who will provide equal or better materials..."

Board Response: Accepted Department's recommendation.

§6.21(a) and (b) Subrecipient Reporting Requirements (1)

Comments expressed the following: "This reporting is required" is redundant. Prior "shall ... submit..." is a statement of requirement.

Department Response: Department recommends deleting the last sentence from the end of (a) and (b): Delete: "This reporting is required."

Board Response: Accepted Department's recommendation.

List of Commenters:

Number 1: Community Services, Inc.

The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

§6.3. Distribution of Funds Formula.

(a) The Department distributes funds to subrecipients by an allocation formula.

(b) This funding formula was developed with input from subrecipients. This formula allocates funds based on the number of low-income households in a service area and takes into account the special needs of individual service areas. The need for energy assistance in an area is addressed through a weather factor (based on heating and cooling degree days). The extra expense in delivering services in sparsely populated areas is addressed by an inverse population density factor. The lack of additional services available in very poor counties is addressed by a county median income factor. Finally, the elderly are given priority by giving greater weight to this population. The five factors used in the formula are calculated as follows:

(1) County Non-elderly Poverty Household Factor is defined as the number of Non-elderly Poverty Households in the County divided by the number of Non-elderly Poverty Households in the State.

(2) County Elderly Poverty Household Factor is defined as the number of Elderly Poverty Households in the County divided by the number of Elderly Poverty Households in the State.

(3) County Inverse Poverty Household Density Factor is defined as:

(A) The number of Square Miles of the County divided by the number of Poverty Households of the County (equals the Inverse Poverty Household Density of the County); and

(B) Inverse Poverty Household Density of the County divided by the Sum of Inverse Household Densities.

(4) County Median Income Variance Factor is defined as:

(A) State Median Income minus the County Median Income (equals County Variance); and

(B) County Variance divided by sum of the State County Variances;

(5) County Weather Factor is defined as:

(A) County Heating Degree Days plus the County Cooling Degree Days, multiplied by the Poverty Households, divided by the sum of County Heating & Cooling Degree Days of Counties (equals County Weather); and

(B) County Weather divided by the total sum of the State County Weather.

(c) The five factors carry the following weights in the allocation formula: number of non-elderly poverty households (40 percent), number of poverty households with at least one member who is 65 years of age or older (40 percent), household density as an inverse ratio (5 percent), the median income of the county (5 percent), and a weather factor based on Heating Degree Days and Cooling Degree Days (10 percent). All demographic factors are based on the 2000 U.S. Census. The formula is as follows:

(1) County Non-elderly Poverty Household Factor (0.40) plus;

(2) County Elderly Poverty Household Factor (0.40) plus;

(3) County Inverse Poverty Household Density Factor (0.05) plus;

(4) County Median Income Variance Factor (0.05) plus;

(5) County Weather Factor (0.10);

(6) Total sum of paragraph (1)-(5) of this subsection multiplied by total funds allocation equals the County's allocation of funds.

(7) The sum of the county allocation within each subrecipient service area equals the subrecipient's total allocation of funds.

(d) Periodically, the Department must shift resources from low-demand regions to high-demand regions of the state. During the sixth month of the program year, the Department will conduct an in-house performance review of all subrecipients. The performance review will include individual subrecipient expenditure rate and households served as specified in the contract of each subrecipient. Based on the review, the Department may deobligate funds from low performing subrecipients and award the funds to high performing subrecipients. Additional DOE funds received during a program year, beyond the regular grant allocation, may be allocated to subrecipients based upon documented need.

(e) The Department is permitted by 10 CFR §440.18, to obligate an additional five (5) percent of DOE-WAP administrative funds to subrecipient DOE-WAP budgets less than \$350,000. In addition to

the DOE funds, the Department utilizes Low Income Home Energy Assistance Program (LIHEAP) funds to provide weatherization services. The Department offsets the funds between DOE and LIHEAP budget awards to allow each subrecipient to receive the maximum allowable administrative funds. Using the distribution formula, the Department makes the corresponding adjustments between the DOE and LIHEAP subrecipient budgets to insure the distribution of funds is appropriately distributed by formula.

§6.5. Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

(a) The subrecipients shall establish the client eligibility level at 125% of the federal poverty level in effect at the time the client makes an application for services. Dwelling units that contain household members who receive SSDI only are not automatically eligible.

(b) The subrecipients shall establish eligibility and priorities criteria to increase the energy efficiency of dwellings owned or occupied by low-income persons who are particularly vulnerable such as the elderly, persons with disabilities, families with young children, high residential energy users, and households with high energy burden. High residential energy users and households with high energy burden are considered to be as follows:

(1) Households with high energy burden. The energy burden is determined by dividing annual home energy costs by annual gross income. The percentage at which energy burden is considered high is defined by data gathered from the State Data Center and updated each year.

(2) Households with high energy consumption as determined by using data collected from the State Data Center and updated each year.

(c) The subrecipients shall follow the Department rules and established state and federal guidelines for determining eligibility for multifamily dwelling units as referenced in §6.6 of this subchapter.

(d) Subrecipients shall base annualized eligibility determinations on household income from the 30 day period prior to the date of application for assistance. Each subrecipient shall document income from all sources for all household members for the entire 30 day period prior to the date of application and multiply by twelve (12) to annualize income. Income documentation must be collected from all income sources for all household members 18 years and older for the entire 30 day period.

(e) Subrecipients shall calculate annual income using, at a minimum, applicant's income from the previous 30 day period. In the case of migrant, seasonal, part-time, temporary, or self-employed workers a longer period than 30 days may be used for annualizing income. However, the same method must be used for all similarly situated workers.

(f) If proof of income is unavailable, the applicant must complete and sign a Declaration of Income Statement (DIS). In order to use the DIS form, each subrecipient shall develop and implement a written policy and procedure on the use of the DIS form. In developing the policy and procedure, subrecipients shall give consideration to limiting the use of the DIS form to cases where there are serious extenuating circumstances that justify the use of the form. Such circumstances might include crisis situations such as applicants that are affected by natural disaster which prevents the applicant from obtaining income documentation, applicants that flee a home due to physical abuse, applicants who are unable to locate income documentation of a recently deceased spouse, or whose work is migratory or seasonal in nature. The Department will review the written policy and its use during on-site monitoring visits.

(g) Subrecipient shall determine income eligibility.

(1) The following list contains the types of income that are included as income in the definition of income for the purpose of determining the total household income:

- (A) Temporary Assistance for Needy Families (TANF);
- (B) money, wages and salaries before any deductions;
- (C) net receipts from non-farm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses);
- (D) regular payments from social security;
- (E) railroad retirement;
- (F) unemployment compensation;
- (G) strike benefits from union funds;
- (H) worker's compensation;
- (I) veteran's payments;
- (J) training stipends;
- (K) alimony;
- (L) military family allotments;
- (M) private pensions;
- (N) government employee pensions (including military retirement pay);
- (O) regular insurance or annuity payments; and
- (P) dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts; and net gambling or lottery winnings.

(2) The following is a list that contains the types of income that are excluded from the definition of income:

- (A) Social Security Disability Insurance (SSDI) payments;
- (B) Supplemental Security Income (SSI) payments;
- (C) capital gains; any assets drawn down as withdrawals from a bank;
- (D) the sale of property, a house, or a car;
- (E) one-time payments from a welfare agency to a family or person who is in temporary financial difficulty;
- (F) tax refunds, gifts, loans, and lump-sum inheritances;
- (G) one-time insurance payments, or compensation for injury;
- (H) non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;
- (I) food or housing received in lieu of wages;
- (J) the value of food and fuel produced and consumed on farms;
- (K) the imputed value of rent from owner-occupied non-farm or farm housing;
- (L) federal non-cash benefit programs as Medicare, Medicaid, Food Stamps, and school lunches;

(M) housing assistance and combat zone pay to the military;

(N) college scholarships, Pell and other grant sources, assistantships, fellowships and work study; and

(O) child support payments.

(h) A dwelling unit shall be eligible for weatherization assistance if it is occupied by a family unit which contains a current household member who has received TANF or SSI at anytime during the twelve month period preceding the determination of eligibility. Dwelling units that contain household members who receive SSDI only are not automatically eligible. The eligibility of dwelling units for WAP services can be found in 10 CFR Part §440.22.

§6.6. Eligibility for Multifamily Dwelling Units.

(a) Dwelling units shall be eligible for weatherization assistance if it is occupied by a family unit which contains a household member who has received TANF or SSI at anytime during the twelve month period preceding the determination of eligibility. Dwelling units that contain household members who receive SSDI only are not automatically eligible. The eligibility of dwelling units for WAP services can be found in 10 CFR Part §440.22.

(b) The substantial investment of weatherization funds required to address multifamily units increases the need for additional quality assurance measures in the WAP. The Department has developed this section to ensure that funds used to weatherize multifamily dwelling units are expended within the scope of established State and Federal guidelines. This section addresses weatherization of multifamily buildings containing more than four but less than 25 dwelling units. Approvals are not required for buildings containing twenty-four dwelling units or less that contain shared central heating and/or cooling systems that use compressed air as a coolant.

(c) DOE approved the use of Energy Audit System (EASY) for use in single family, mobile home, and multifamily buildings with fewer than twenty-five dwelling units. The approval does not cover large multifamily buildings containing twenty-five or more dwelling units or those with shared central heating (i.e. boilers) and/or shared cooling plants (i.e. cooling towers that use water as the coolant). DOE defines a building as a group of dwellings under the same roof.

(d) In order to weatherize large multifamily buildings containing twenty-five or more dwelling units or those with shared central heating (i.e. boilers) and/or shared cooling plants (i.e. cooling towers that use water as the coolant) regardless of the number of dwelling units, subrecipients shall submit in writing a request for approval from the Department. In turn, the Department will seek approval from DOE. Approvals from DOE must be received prior to the installation of any weatherization measures in this type of structure.

(e) In order to weatherize shelters, subrecipients shall submit a written request for approval from the Department. Approvals from the Department must be received prior to the installation of any weatherization measures.

(f) If roof replacement is to be considered as part of repair cost under the weatherization process, the expenses must be shared equally by all eligible units weatherized under the same roof. If multiple storied buildings are weatherized, eligible ground story units must be allocated a portion of the roof cost as well as the eligible top story units. All weatherization measures installed in multifamily units must meet the standards set in 10 CFR §440.18(c)(9) and §(15) and Appendix A--Standards for Weatherization Materials, and meet a savings-to-investment ratio of one or greater on the EASY Audit. DOE specifically addresses the eligibility of multifamily units in 10 CFR §440.22 (a)-(d).

(g) WAP subrecipients shall establish a multifamily master file for each multifamily project in addition to the individual unit requirements found in the record keeping requirement section of the contract. Subrecipients shall maintain a multifamily master file for each complex weatherized. The multifamily master file must include, at a minimum, the following forms:

- (1) Multifamily Pre-Project Checklist Form;
- (2) Multifamily Post-Project Checklist Form;
- (3) Permission to Perform an Assessment for Multifamily Project Form;
- (4) Landlord Agreement Form;
- (5) Landlord Financial Participation Form; and
- (6) Significant Data Required in all Multifamily Project.

§6.8. Subrecipient Requirements for Appeals Process for Applicants.

(a) Subrecipients shall provide a written denial of assistance notice to applicant within ten (10) days of the adverse determination. If the denial is for any reason other than DOE reweatherization, as specified in 10 CFR 440, the subrecipient will notify the applicant of the adverse determination. This notification shall include written instructions of the appeals process and specific reasons for the denial by component. The applicants wishing to appeal a decision must provide written notice to subrecipient within 10 days of receipt of the denial notice.

(b) The subrecipient who receives an appeal shall establish an appeals committee composed of at least three persons. Subrecipient shall maintain documentation of appeals in their client files.

(c) The subrecipient shall hold the appeal hearing within ten business days after the subrecipient received the appeal request from the applicant.

(d) The subrecipient shall tape record the hearing.

(e) The hearing shall allow time for a statement by subrecipient staff with knowledge of the case.

(f) The hearing shall allow the applicant at least equal time, if requested, to present relevant information contesting the decision.

(g) Subrecipient shall notify applicant of the decision in writing. The subrecipient shall mail the notification by close of business on the business day following the decision. (1 day turn-around)

(h) If the applicant is not satisfied, they may further appeal the decision in writing to the Department within ten days of notification of an adverse decision.

(i) If client appeals to the Department, the subrecipient must retain the maximum allowable cost per unit until the Department renders a decision.

(j) The Department may review the tape recording of the hearing, the committee's decision, and any other relevant information necessary.

(k) The Department appeals committee shall decide the case and forward their recommendation to the Division Director for final concurrence.

(l) The Department will notify all parties in writing of its decision within 30 days of receipt of the appeal.

§6.13. Client Education.

The subrecipients shall provide client education to each WAP client on energy conservation practices. Subrecipients shall provide education to identify energy waste, manage household energy use, and strategies to promote energy savings. Subrecipients are encouraged to use oral,

written, and visual educational materials. These activities are paid with the Department's training and technical assistance funds and the subrecipients' program support funds.

§6.14. Adjusted Average Expenditure Per Dwelling Unit.

Expenditures of financial assistance provided under DOE-WAP funding for the weatherization services for labor, weatherization materials, and related matters shall not exceed the adjusted average expenditure limit for the current program year per dwelling unit as provided by DOE, without special agreement via an approved waiver from the Department.

§6.16. Health and Safety.

(a) Subrecipients shall provide weatherization services with the primary goal of energy efficiency. The Department considers establishing a healthy and safe home environment to be important to ensuring that energy savings result from weatherization work.

(b) It is the policy of the Department that if health and safety issues identified on an individual unit (which would be exacerbated by any weatherization work performed) cannot be abated within the allowable WAP limits, the unit shall be denied services.

(c) The Department has determined that repair/replacement windows which do not rank with a SIR of one or greater on the audit may be repaired/replaced, if deemed a threat to health and safety. To be eligible for repair/replacement, broken window panes must pose a potential hazardous condition to the client and/or workers. Documentation for replacement must include a clear comprehensible photo showing the hazardous conditions to the occupants. Failure to provide a photo will result in disallowed costs. Slightly cracked window panes do not constitute a hazardous condition.

(d) The Department has determined that repair/replacement doors which do not rank with an SIR of one or greater on the audit, may be repaired/replaced, if deemed a threat to health and safety. To be eligible for repair/replacement the doors must be unable to protect the client from outside elements or unwanted intruders. Documentation for replacement must include a clear comprehensible photo evidencing the hazardous conditions to the occupants. Documentation must be submitted to the assigned Department program officer for approval. The absence of deadbolt locks does not constitute a hazardous health and safety condition by itself.

§6.19. Payments to Contractors and Vendors.

(a) A vendor agreement is required by the Department and implemented via the subrecipient. The vendor agreement shall contain assurances as to fair billing practices, delivery procedures, and pricing procedures for business transactions involving DOE recipients.

(b) Subrecipient shall maintain proof of payment to contractors and vendors.

§6.20. State Contract Purchases.

(a) Subrecipients shall comply with the Department rules and state procurement standards regarding competitive solicitation of bids for materials, labor, and equipment and shall adhere to guidelines for selection and award of subcontracts.

(b) Subrecipient shall develop and implement procurement procedures, which conform to the cost principles and uniform administrative requirements set forth in the Uniform Grant and Contract Management Standards, 1 TAC §5.141 et seq.

(c) The State of Texas conducts competitive solicitations to identify equipment and material vendors to provide specified merchandise at discounted prices to State agencies and their contracted agents. Unless a local vendor is identified through a competitive solicitation

who will provide equal or better materials and services at the same price or less, subrecipients shall purchase any equipment, materials, or services paid for with DOE funds from a vendor participating in the Texas Building and Procurement Commission's Cooperative Purchasing Program.

§6.21. Subrecipient Reporting Requirements.

(a) The subrecipient shall electronically submit to the Department a monthly Funding Report of all expenditure of funds, request for advance or reimbursement, and a monthly performance report no later than fifteen (15) days after the end of each month.

(b) The subrecipient shall electronically submit to the Department no later than sixty (60) days after the end of the subrecipient contract term a final expenditure or reimbursement and programmatic report utilizing the Funding Report.

(c) The subrecipient shall submit to the Department no later than sixty (60) days after the end of the contract term an inventory of all vehicles, tools, and equipment with a unit acquisition cost of \$5,000 or more and a useful life of more than one year, if purchased in whole or in part with DOE-WAP funds.

(d) The subrecipient shall submit other reports, data, and information on the performance of the DOE-WAP program activities as required by DOE pursuant to 10 CFR §440.25 or by the Department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 12, 2007.

TRD-200700940

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Effective date: April 1, 2007

Proposal publication date: September 15, 2006

For further information, please call: (512) 475-4595



SUBCHAPTER B. LOW INCOME HOME ENERGY ASSISTANCE PROGRAM WEATHERIZATION ASSISTANCE PROGRAM (LIHEAP-WAP)

10 TAC §§6.101 - 6.121

The Texas Department of Housing and Community Affairs (the Department) adopts the proposed new §§6.101 - 6.121, concerning the Low Income Home Energy Assistance Program Weatherization Assistance Program (LIHEAP-WAP) Rules, as published in the September 15, 2006 issue of the *Texas Register* (31 TexReg 7823). Sections 6.102, 6.105, 6.106, 6.108, 6.112, 6.113, 6.116, 6.118, 6.119, and 6.121 are adopted with changes. Sections 6.101, 6.103, 6.104, 6.107, 6.109, 6.110, 6.111, 6.114, 6.115, 6.117, and 6.120 are adopted without changes and will not be republished.

These sections that are adopted with changes are due to public comment. The scope of the public comment concerning the Low Income Home Energy Assistance Program Weatherization Assistance Program (LIHEAP-WAP) pertains to the following sections:

SUMMARY OF COMMENTS RECEIVED UPON PUBLICATION OF THE PROPOSED RULES IN THE TEXAS REGISTER AND COMMENTS PROVIDED AT PUBLIC HEARINGS HELD BY THE DEPARTMENT ON ITEMS THAT RELATE DIRECTLY TO THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM WEATHERIZATION ASSISTANCE PROGRAM (LIHEAP-WAP).

§6.102(d) Program Overview (1)

Comments expressed the following: "The Department will reserve 15% ... to administer... The state and local administrative costs... shall not exceed 10%." What happens to the other 5%?"

Department Response: Department recommends changing the first sentence of (d) to read as follows: The Department will reserve 15 percent of the federal LIHEAP grant award funds for the LIHEAP-WAP weatherization related activities.

Board Response: Accepted Department's recommendation.

§6.102(f) Program Overview (1)

Comments expressed the following: "The Department retains a minimum of 10%..." Doesn't this conflict with (c), above?

Department Response: This 10 percent is for administrative funds only.

Board Response: Accepted Department's recommendation.

§6.105(a) Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria (1)

Comments expressed the following: "...no less than 125%-- means subrecipient could establish eligibility level at 150% or more! Should read "Client household income shall be no more than 125%..." Subrecipient should not be able to establish eligibility levels.

Department Response: Department recommends for this to read as follows: The subrecipients shall establish the client eligibility level at 125% of the federal poverty level in effect at the time the client makes an application for services. Dwelling units that contain household members who receive SSDI only are not automatically eligible.

Board Response: Accepted Department's recommendation.

§6.105(e) Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria (1)

Comments expressed the following: Second sentence, "In the case of migrant or seasonal workers..." Please revise to read "... migrant, seasonal, part-time, temporary or self-employed workers..." None of these receive regular weekly or monthly pay.

Department Response: Department recommends for this sentence to be revised to read as follows: In the case of migrant, seasonal, part-time, temporary, or self-employed workers, a longer period than 30 days may be used for annualizing income.

Board Response: Accepted Department's recommendation.

§6.106(a) Eligibility for Multifamily Dwelling Units (1)

Comments expressed the following: "Dwelling units shall be eligible... who receive SSDI only are not automatically eligible." Why is this in Multi-family section but not in §6.5? Is there a difference between single-family units and multi-family units in this regard?

Department Response: Department recommends adding inclusion of identical language for single family residences.

Board Response: Accepted Department's recommendation.

§6.108(b) - (g) Subrecipient Requirements for Appeals Process for Applicants Eligibility for Multifamily Dwelling Units (1)

Comments expressed the following: This process is a complete waste of time when the denial is because the household income exceeds the allowable limit, the unit has been previously weatherized since the DOE-established date, mold or other health & safety issues exist (Ref. §6.12 and §6.16(b)), or proposed work did not meet TDHCA Audit SIR requirements.

Department Response: Department recommends adding the following sentence to §6.108(a) after the first sentence: If the denial is for any reason other than DOE reweatherization, as specified in 10 CFR 440, the subrecipient will notify the applicant of the adverse determination.

Board Response: Accepted Department's recommendation.

§6.112 Client Education (1)

Comments expressed the following: "These activities are paid with... and the subrecipients' administrative funds." Why not program support funds? That's what client education is!

Department Response: Department recommends changing the last sentence to read as follows: These activities are paid with the Department's and the subrecipients' program support funds.

Board Response: Accepted Department's recommendation.

§6.113 Allowable Expenditure Per Dwelling Unit (1)

Comments expressed the following: "Expenditures ... under DOE-WAP..." should be LIHEAP-WAP. Also, delete "or other resources." ... shall not exceed the adjusted average expenditure limit ... per dwelling unit as provided by DOE." UNACCEPTABLE! Why should leveraged funds, ie: USDA, utilities, landlord payments, etc., all have to fit within the DOE maximum average unit cost? And what about DOE + LIHEAP piggy-backed units? Please delete "or other resources."

Department Response: Expenditures of financial assistance provided under LIHEAP-WAP funding for the weatherization services for labor, weatherization materials, and related matters shall not exceed the allowable figure as set forth in the annual LIHEAP State Plan.

Board Response: Accepted Department's recommendation.

§6.116(a) Health and Safety (1)

Comments expressed the following: First sentence is grammatically incorrect. Suggest delete "the WAP is."

Department Response: Department recommends changing the first sentence of (a) to the following: Subrecipients shall provide weatherization services with the primary goal of energy efficiency.

Board Response: Accepted Department's recommendation.

§6.116(c) Health and Safety (1)

Comments expressed the following: "The department has determined that repair/replacement windows that (which?) do not rank with a (an?) SIR of one or greater ... may be repaired/replaced if deemed necessary." GREAT! We need this, but not if it just applies to broken panes. Also, what if window panes are broken between assessment and subcontractor work? Do we still have to make a trip to take a picture?

Department Response: Department recommends changing the first sentence of (c) to the following: The Department has determined that repair/replacement windows which do not rank with a SIR of one or greater on the audit may be repaired/replaced, if deemed a threat to health and safety.

Board Response: Accepted Department's recommendation.

§6.116(d) Health and Safety (1)

Comments expressed the following: "Documentation must be submitted to ... program officer for approval." Before doing the work? In every case? This is a very common situation, and it is not feasible to wait for submission and approval. Why isn't "a clear, comprehensible photo" in the file enough?

Also, I disagree that absence of deadbolts does not constitute a hazardous health and safety condition, considering where a majority of our clients live, and dead bolts are required, by Texas law, on all rental unit doors.

Department Response: Department recommends changing the last sentence in this section to read as follows: The absence of deadbolt locks does not constitute a hazardous health and safety condition by itself.

Board Response: Accepted Department's recommendation.

§6.118(a) Payments to Contractors and Vendors (1)

Comments expressed the following: Sentence is grammatically incorrect & incoherent. What does it mean?

Department Response: Department recommends to change the first two sentences to read as follows: A vendor agreement is required by the Department and implemented via the subrecipient. The vendor agreement shall contain assurances as to fair billing practices, delivery procedures, and pricing procedures for business transactions involving LIHEAP recipients.

Board Response: Accepted Department's recommendation.

§6.119(c) State Contract Purchases (1)

Comments expressed the following: "Unless a local vendor ... that (who?) will provide ... at the same price or less, subrecipients shall ..." There should be a threshold or minimum quantity so we aren't required to purchase individual items, such as large window air conditioners or water heaters, for separate, unusually remote locations, every time they are needed. In many cases, using a local vendor at a higher price is the most efficient method, especially considering warranty service or replacement.

Also, will TDHCA provide a list of applicable equipment and materials and associated vendors available thru the State Purchasing Program?

Department Response: Department recommends changing the second sentence to read as follows: Unless a local vendor is identified through a competitive solicitation who will provide equal or better materials and services at the same price or less, subrecipients shall purchase any equipment, materials, or services paid for with LIHEAP funds from a vendor participating in the Texas Building and Procurement Commission's Cooperative Purchasing Program.

Board Response: Accepted Department's recommendation.

§6.121(a) and (b) Subrecipient Reporting Requirements (1)

Comments expressed the following: "This reporting is required" is redundant. Prior "shall ... submit..." is a statement of requirement.

Department Response: Department recommends deleting the last sentence from the end of (a) and (b): Delete: "This reporting is required."

Board Response: Accepted Department's recommendation.

List of Commenters:

Number 1: Community Services, Inc.

The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

§6.102. Program Overview.

(a) The Energy Assistance Programs are referred to as the Energy Services Program for Low-Income Individuals in accordance with Texas Government Code, §2306.097. The Low Income Home Energy Assistance Program Weatherization Assistance Program (LIHEAP-WAP) is funded through the U.S. Department of Health and Human Services' Low Income Home Energy Assistance Program (LIHEAP) grant. LIHEAP-WAP offers grants to community action agencies, nonprofits, and local units of government with targeted beneficiaries being households with low incomes, with priority given to the elderly; persons with disabilities; families with young children; households with the highest energy costs or needs in relation to income; and households with high energy consumption. In addition to meeting the income-eligibility criteria, the weatherization measures to be installed must meet specific energy-savings goals.

(b) The program funds the installation of weatherization materials and provides energy conservation education. The program helps to control energy costs to ensure a healthy and safe living environment.

(c) The Department shall administer and implement the program in accordance with a combination of LIHEAP and DOE rules. LIHEAP weatherization measures may be leveraged with DOE weatherization measures.

(d) The Department will reserve 15 percent of the federal LIHEAP grant award funds for the LIHEAP-WAP weatherization related activities. The state and local administrative costs associated with administering the weatherization program under LIHEAP shall not exceed 10 percent.

(e) The Department will reserve 75 percent of the federal LIHEAP grant award funds to implement the Comprehensive Energy Assistance Program (CEAP) activities.

(f) The Department retains a maximum of 10% of the federal LIHEAP grant award funds for subrecipients' and the Department's administrative funds for LIHEAP-WAP and CEAP.

§6.105. Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

(a) The subrecipients shall establish the client eligibility level at 125% of the federal poverty level in effect at the time the client makes an application for services. Dwelling units that contain household members who receive SSDI only are not automatically eligible.

(b) The subrecipients shall establish eligibility and priorities criteria to increase the energy efficiency of dwellings owned or occupied by low-income persons who are particularly vulnerable such as the elderly, persons with disabilities, families with young children, high residential energy users, and households with high energy burden. High residential energy users and households with high energy burden are considered to be as follows:

(1) Households with high energy burden. The energy burden is determined by dividing annual home energy costs by annual

gross income. The percentage at which energy burden is categorized as high is defined by data gathered from the State Data Center and updated each year.

(2) Households with high energy consumption, as determined by using data collected from the State Data Center and updated each year.

(c) The subrecipients shall follow the Department rules and established state and federal guidelines for determining eligibility for multifamily dwelling units as referenced in §6.106 of this subchapter.

(d) Subrecipients shall base annualized eligibility determinations on household income from the 30 day period prior to the date of application for assistance. Each subrecipient shall document income from all sources for all household members for the entire 30 day period prior to the date of application and multiply by twelve (12) to annualize income. Income documentation must be collected from all income sources for all household members 18 years and older for the entire 30 day period.

(e) Subrecipients shall calculate annual income using, at a minimum, applicant's income from the previous 30 day period. In the case of migrant, seasonal, part-time, temporary, or self-employed workers, a longer period than 30 days may be used for annualizing income. However, the same method must be used for all similarly situated workers.

(f) If proof of income is unavailable, the applicant must complete and sign a Declaration of Income Statement (DIS). In order to use the DIS form, each subrecipient shall develop and implement a written policy and procedure on the use of the DIS form. In developing the policy and procedure, subrecipients shall give consideration to limiting the use of the DIS form to cases where there are serious extenuating circumstances that justify the use of the form. Such circumstances might include crisis situations such as applicants that are affected by natural disaster which prevents the applicant from obtaining income documentation, applicants that flee a home due to physical abuse, applicants who are unable to locate income documentation of a recently deceased spouse, or whose work is migratory or seasonal in nature. The Department will review the written policy and its use during on-site monitoring visits.

(g) Subrecipient shall determine income eligibility.

(1) The following list contains the types of income that are included as income in the definition of income for the purpose of determining the total household income:

- (A) Temporary Assistance for Needy Families (TANF);
- (B) money, wages and salaries before any deductions;
- (C) net receipts from non-farm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses);
- (D) regular payments from social security;
- (E) railroad retirement;
- (F) unemployment compensation;
- (G) strike benefits from union funds;
- (H) worker's compensation;
- (I) veteran's payments;
- (J) training stipends;
- (K) alimony;

- (L) military family allotments;
- (M) private pensions;
- (N) government employee pensions (including military retirement pay);
- (O) regular insurance or annuity payments; and
- (P) dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts; and net gambling or lottery winnings.

(2) The following is a list that contains the types of income that are excluded from the definition of income:

- (A) Social Security Disability Insurance (SSDI) payments;
- (B) Supplemental Security Income (SSI) payments;
- (C) capital gains; any assets drawn down as withdrawals from a bank;
- (D) the sale of property, a house, or a car;
- (E) one-time payments from a welfare agency to a family or person who is in temporary financial difficulty;
- (F) tax refunds, gifts, loans, and lump-sum inheritances;
- (G) one-time insurance payments, or compensation for injury;
- (H) non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;
- (I) food or housing received in lieu of wages;
- (J) the value of food and fuel produced and consumed on farms;
- (K) the imputed value of rent from owner-occupied non-farm or farm housing;
- (L) federal non-cash benefit programs as Medicare, Medicaid, Food Stamps, and school lunches;
- (M) housing assistance and combat zone pay to the military;
- (N) college scholarships, Pell and other grant sources, assistantships, fellowships and work study; and
- (O) child support payments.

(h) A dwelling unit shall be eligible for weatherization assistance if it is occupied by a family unit which contains a current household member who has received TANF or SSI at anytime during the twelve month period preceding the determination of eligibility. Dwelling units that contain household members who receive SSDI only are not automatically eligible. The eligibility of dwelling units for WAP services can be found in 10 CFR Part §440.22.

§6.106. Eligibility for Multifamily Dwelling Units.

(a) A dwelling unit shall be eligible for weatherization assistance if it is occupied by a family unit which contains a household member who has received TANF or SSI at anytime during the twelve month period preceding the determination of eligibility. Dwelling units that contain household members who receive SSDI only are not automatically eligible. The eligibility of dwelling units for WAP services can be found in 10 CFR Part §440.22.

(b) The substantial investment of weatherization funds required to address multifamily units increases the need for additional quality assurance measures in the WAP. The Department has developed this section to ensure that funds used to weatherize multifamily dwelling units are expended within the scope of established State and Federal guidelines. This section addresses weatherization of multifamily buildings containing more than four (4) but less than 25 dwelling units. Approvals are not required for buildings containing twenty-four dwelling units or less that contain shared central heating and/or cooling systems that use compressed air as a coolant.

(c) DOE approved the use of Energy Audit System (EASY) for use in single family, mobile home, and multifamily buildings with fewer than twenty-five dwelling units. The approval does not cover large multifamily buildings containing twenty-five or more dwelling units or those with shared central heating (i.e. boilers) and/or shared cooling plants (i.e. cooling towers that use water as the coolant). DOE defines a building as a group of dwellings under the same roof.

(d) In order to weatherize large multifamily buildings containing twenty-five or more dwelling units or those with shared central heating (i.e. boilers) and/or shared cooling plants (i.e. cooling towers that use water as the coolant) regardless of the number of dwelling units, subrecipients shall submit in writing a request for approval from the Department. In turn, the Department will seek approval from DOE. Approvals from DOE must be received prior to the installation of any weatherization measures.

(e) In order to weatherize shelters, subrecipients shall submit a written request for approval from the Department. Approvals from the Department must be received prior to the installation of any weatherization measures.

(f) Subrecipients are reminded that if roof replacement is to be considered as part of repair cost under the weatherization process, the expenses shall be shared equally by all eligible units weatherized under the same roof. If multiple storied buildings are weatherized, eligible ground story units must be allocated a portion of the roof cost as well as the eligible top story units. All weatherization measures installed in multifamily units must meet the standards set in 10 CFR §440.18(c)(9) and (15) and Appendix A--Standards for Weatherization Materials, and meet a savings-to-investment ratio of one (1) or greater on the EASY Audit. DOE specifically addresses the eligibility of multifamily units in 10 CFR §440.22 (a)-(d).

(g) WAP subrecipients shall establish a multifamily master file for each multifamily project in addition to the individual unit requirements found in the record keeping requirement section of the contract. Subrecipients shall maintain a multifamily master file for each complex weatherized. The multifamily master file must include, at a minimum, the following forms:

- (1) Multifamily Pre-Project Checklist Form;
- (2) Multifamily Post-Project Checklist Form;
- (3) Permission to Perform an Assessment for Multifamily Project Form;
- (4) Landlord Agreement Form;
- (5) Landlord Financial Participation Form; and
- (6) Significant Data Required in all Multifamily Project.

§6.108. Subrecipient Requirements for Appeals Process for Applicants.

(a) Subrecipients shall provide a written denial of assistance notice to applicant within ten (10) days of the adverse determination. If the denial is for any reason other than DOE reweatherization, as spec-

ified in 10 CFR 440, the subrecipient will notify the applicant of the adverse determination. This notification shall include written instructions of the appeals process and specific reasons for the denial by component. The applicants wishing to appeal a decision must provide written notice to subrecipient within 10 days of receipt of the denial notice.

(b) The subrecipient who receives an appeal shall establish an appeals committee composed of at least three persons. Subrecipient shall maintain documentation of appeals in their client files.

(c) The subrecipient shall hold the appeal hearing within ten business days after the subrecipient received the appeal request from the applicant.

(d) The subrecipient shall tape record the hearing.

(e) The hearing shall allow time for a statement by subrecipient staff with knowledge of the case.

(f) The hearing shall allow the applicant at least equal time, if requested, to present relevant information contesting the decision.

(g) Subrecipient shall notify applicant of the decision in writing. The subrecipient shall mail the notification by close of business on the business day following the decision. (1 day turn-around)

(h) If the applicant is not satisfied, they may further appeal the decision in writing to the Department within ten days of notification of an adverse decision.

(i) If client appeals to the Department, the funds should remain encumbered until the Department completes its decision.

(j) The Department may review the tape recording of the hearing, the committee's decision, and any other relevant information necessary.

(k) The Department appeals committee shall decide the case and forward their recommendation to the Division Director for final concurrence.

(l) The Department will notify all parties in writing of its decision within 30 days of receipt of the appeal.

§6.112. Client Education.

The subrecipients shall provide client education to each WAP client on energy conservation practices. Subrecipients shall provide education to identify energy waste, manage household energy use, and strategies to promote energy savings. Subrecipients are encouraged to use oral, written, and visual educational materials. These activities are paid with the Department's and the subrecipients' program support funds.

§6.113. Allowable Expenditure Per Dwelling Unit.

Expenditures of financial assistance provided under LIHEAP-WAP funding for the weatherization services for labor, weatherization materials, and related matters shall not exceed the allowable figure as set forth in the annual LIHEAP State Plan. The current allowable amount is set at \$4,000 per dwelling unit.

§6.116. Health and Safety.

(a) Subrecipients shall provide weatherization services with the primary goal of energy efficiency. The Department considers establishing a healthy and safe home environment to be important to ensuring that energy savings result from weatherization work.

(b) It is the policy of the Department that if health and safety issues identified on an individual unit (which would be exacerbated by any weatherization work performed) cannot be abated within the allowable WAP limits, the unit shall be denied services.

(c) The Department has determined that repair/replacement windows which do not rank with a SIR of one or greater on the audit

may be repaired/replaced, if deemed a threat to health and safety. To be eligible for repair/replacement, broken window panes must pose a potential hazardous condition to the client and/or workers. Documentation for replacement must include a clear comprehensible photo showing the hazardous conditions to the occupants. Failure to provide a photo will result in disallowed costs. Slightly cracked window panes do not constitute a hazardous condition.

(d) The Department has determined that repair/replacement doors which do not rank with an SIR of one or greater on the audit, may be repaired/replaced, if deemed a threat to health and safety. To be eligible for repair/replacement the doors must be unable to protect the client from outside elements or unwanted intruders. Documentation for replacement must include a clear comprehensible photo evidencing the hazardous conditions to the occupants. Documentation must be submitted to the assigned the Department program officer for approval. The absence of deadbolt locks does not constitute a hazardous health and safety condition by itself.

§6.118. Payments to Contractors and Vendors.

(a) A vendor agreement is required by the Department and implemented via the subrecipient. The vendor agreement shall contain assurances as to fair billing practices, delivery procedures, and pricing procedures for business transactions involving LIHEAP recipients.

(b) Subrecipient shall maintain proof of payment to contractors and vendors.

§6.119. State Contract Purchases.

(a) Subrecipients shall comply with the Department rules and state procurement standards regarding competitive solicitation of bids for materials, labor, and equipment and shall adhere to guidelines for selection and award of subcontracts.

(b) Subrecipient shall develop and implement procurement procedures, which conform to the cost principles and uniform administrative requirements set forth in the Uniform Grant and Contract Management Standards, 1 TAC §5.141 et seq.

(c) The State of Texas conducts competitive solicitations to identify equipment and material vendors to provide specified merchandise at discounted prices to State agencies and their contracted agents. Unless a local vendor is identified through a competitive solicitation who will provide equal or better materials and services at the same price or less, subrecipients shall purchase any equipment, materials, or services paid for with LIHEAP funds from a vendor participating in the Texas Building and Procurement Commission's Cooperative Purchasing Program.

§6.121. Subrecipient Reporting Requirements.

(a) The subrecipient shall electronically submit to the Department a monthly Funding Report of all expenditure of funds, request for advance or reimbursement, and a monthly performance report no later than fifteen (15) days after the end of each month.

(b) The subrecipient shall electronically submit to the Department no later than sixty (60) days after the end of the subrecipient contract term a final expenditure or reimbursement and programmatic report utilizing the Funding Report.

(c) The subrecipient shall submit to the Department no later than sixty (60) days after the end of the contract term an inventory of all vehicles, tools, and equipment with a unit acquisition cost of \$5,000 or more and a useful life of more than one year, if purchased in whole or in part with LIHEAP-WAP funds.

(d) The subrecipient shall submit other reports, data, and information on the performance of the LIHEAP-WAP program activities as required by the Department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 12, 2007.

TRD-200700941

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Effective date: April 1, 2007

Proposal publication date: September 15, 2006

For further information, please call: (512) 475-4595



SUBCHAPTER C. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM (CEAP)

10 TAC §§6.201 - 6.214

The Texas Department of Housing and Community Affairs (the Department) adopts new §§6.201 - 6.214, concerning the Comprehensive Energy Assistance Program (CEAP) Rules, as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7829). Section 6.205 and §6.214 are adopted with changes. Sections §§6.201 - 6.204 and §§6.206 - 6.213 are adopted without changes and will not be republished.

There were no comments for CEAP. The sections that are adopted with changes are due to the Department administrative recommendations to make all of the Energy Assistance Programs uniform. The scope of the recommended changes to the Comprehensive Energy Assistance Program (CEAP) pertains to the following sections:

SUMMARY OF ADMINISTRATIVE RECOMMENDATIONS OF THE PROPOSED RULES IN THE TEXAS REGISTER BY THE DEPARTMENT ON ITEMS THAT RELATE TO THE ENERGY ASSISTANCE PROGRAMS.

Section 6.205(a) Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

Department Recommendations: Department recommends for this sentence to read as follows: "The subrecipients shall establish the client eligibility level at 125% of the federal poverty level in effect at the time the client makes an application for services."

Board Response: Accepted Department's recommendation.

Section 6.205(f) Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

Department Recommendation: Department recommends revising the fourth sentence to read as follows: "Such circumstances might include crisis situations such as applicants that are affected by natural disaster which prevents the applicant from obtaining income documentation, applicants that flee a home due to physical abuse, applicants who are unable to locate income documentation of a recently deceased spouse, or whose work is migratory, part-time, temporary, self-employed or seasonal in nature."

Board Response: Accepted Department's recommendation.

Section 6.214(a) Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

Department Recommendation: Department recommends deleting the last sentence from the end of (a): Delete: "This reporting is required."

Board Response: Accepted Department's recommendation.

List of Commenters:

None

The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, article or statutes are affected by the adopted sections.

§6.205. Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.

(a) The subrecipients shall establish the client eligibility level at 125% of the federal poverty level in effect at the time the client makes an application for services.

(b) The subrecipients shall establish priorities criteria to serve persons in households who are particularly vulnerable such as the elderly, persons with disabilities, families with young children, high residential energy users, and households with high energy burden. High residential energy users and households with high energy burden are considered to be as follows:

(1) Households with high energy burden (greater than 11.08% of household income). When data becomes available from the State Data Center this percentage figure will be updated. Energy burden is figured by dividing home energy costs by gross income.

(2) Households with high energy consumption (greater than \$1,028 per year). When data becomes available from the State Data Center this figure will be updated. The households' annual home energy consumption is calculated and the ones that exceed \$1,028 are counted as high energy consumption households.

(c) The subrecipients shall follow the Department rules and established state and federal guidelines for determining eligibility for multifamily dwelling units.

(d) Subrecipients shall base annualized eligibility determinations on household income from the 30 day period prior to the date of application for assistance. Each subrecipient shall document income from all sources for all household members for the entire 30 day period prior to the date of application and multiply by twelve (12) to annualize income. Income documentation must be collected from all income sources for all household members 18 years and older for the entire 30 day period.

(e) Subrecipients shall calculate annual income using, at a minimum, applicant's income from the previous 30 day period. In the case of migrant or seasonal workers, a longer period than 30 days may be used for annualizing income. However, the same method must be used for all similarly situated workers.

(f) If proof of income is unavailable, the applicant must complete and sign a Declaration of Income Statement (DIS). In order to use the DIS form, each subrecipient shall develop and implement a written policy and procedure on the use of the DIS form. In developing the policy and procedure, subrecipients shall give consideration to limiting the use of the DIS form to cases where there are serious extenuating circumstances that justify the use of the form. Such circumstances might include crisis situations such as applicants that are affected by natural disaster which prevents the applicant from obtaining income documentation, applicants that flee a home due to physical abuse, applicants who are unable to locate income documentation of a recently deceased spouse, or whose work is migratory, part-time, temporary,

self-employed or seasonal in nature. The Department will review the written policy and its use during on-site monitoring visits.

(g) Subrecipient shall determine income eligibility.

(1) The following list contains the types of income that are included as income in the definition of income for the purpose of determining the total household income:

(A) Temporary Assistance for Needy Families (TANF);

(B) money, wages and salaries before any deductions;

(C) net receipts from non-farm or farm self-employment (receipts from a person's own business or from an owned or rented farm after deductions for business or farm expenses);

(D) regular payments from social security;

(E) railroad retirement;

(F) unemployment compensation;

(G) strike benefits from union funds;

(H) worker's compensation;

(I) veteran's payments;

(J) training stipends;

(K) alimony;

(L) military family allotments;

(M) private pensions;

(N) government employee pensions (including military retirement pay);

(O) regular insurance or annuity payments; and

(P) dividends, interest, net rental income, net royalties, periodic receipts from estates or trusts; and net gambling or lottery winnings.

(2) The following is a list that contains the types of income that are excluded from the definition of income:

(A) Social Security Disability Insurance (SSDI) payments;

(B) Supplemental Security Income (SSI) payments;

(C) capital gains; any assets drawn down as withdrawals from a bank;

(D) the sale of property, a house, or a car;

(E) one-time payments from a welfare agency to a family or person who is in temporary financial difficulty;

(F) tax refunds, gifts, loans, and lump-sum inheritances;

(G) one-time insurance payments, or compensation for injury;

(H) non-cash benefits, such as the employer-paid or union-paid portion of health insurance or other employee fringe benefits;

(I) food or housing received in lieu of wages;

(J) the value of food and fuel produced and consumed on farms;

(K) the imputed value of rent from owner-occupied non-farm or farm housing;

(L) federal non-cash benefit programs as Medicare, Medicaid, Food Stamps, and school lunches;

(M) housing assistance and combat zone pay to the military;

(N) college scholarships, Pell and other grant sources, assistantships, fellowships and work study; and

(O) child support payments.

(h) Homeowners and renters will be treated equitably under all programs funded in whole or in part from LIHEAP funds. For those renters who pay heating and/or cooling bills as part of their rent, the subrecipient shall make special efforts to determine the portion of the rent that constitutes the fuel heating and/or cooling payment. If "sub metering" is not available, the subrecipient shall exercise care when negotiating with the landlords so the cost of utilities quoted is in line with the consumption for similar residents of the community. If the subrecipient pays the landlord, then the landlord shall furnish evidence that he/she has paid the bill and the amount of assistance must be deducted from the rent, if the utility payment is not stated separately from the rent. An agreement stating the terms of the payment negotiations must be signed by the landlord.

§6.214. Subrecipient Reporting Requirements.

(a) The subrecipient shall electronically submit to the Department a monthly Funding Report of all expenditure of funds, request for advance or reimbursement, and a monthly performance report no later than fifteen (15) days after the end of each month.

(b) The subrecipient shall electronically submit to the Department no later than sixty (60) days after the end of the subrecipient contract term a final expenditure or reimbursement and programmatic report utilizing the Funding Report. This reporting is required.

(c) The subrecipient shall submit to the Department no later than sixty (60) days after the end of the contract term an inventory of all vehicles, tools, and equipment with a unit acquisition cost of \$5,000 or more and a useful life of more than one year, if purchased in whole or in part with LIHEAP-CEAP funds.

(d) The subrecipient shall submit other reports, data, and information on the performance of the LIHEAP-CEAP program activities as required by the Department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 12, 2007.

TRD-200700942

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

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For further information, please call: (512) 475-4595

TITLE 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

SUBCHAPTER A. RACETRACK LICENSES

16 TAC §309.8

The Texas Racing Commission adopts an amendment to §309.8, relating to the license fees charged to pari-mutuel racetracks, without changes to the proposed text as published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10487). The section creates an annual license fee for active pari-mutuel racetracks, increases the annual license fee for licensed but inactive pari-mutuel racetracks, and deletes the additional fee charged to an association that conducts the Breeders' Cup races.

As a result of this change, the Commission will receive an additional \$452,500 in revenue during fiscal year 2007, and an additional \$790,000 in each subsequent fiscal year. This additional revenue is necessary to fund agency operations for fiscal year 2007 and subsequent years.

The Commission received five comments regarding the rule. The first commenter stated that the amount of increase in the annual inactive license fee for Class 2 racetracks is excessive and thereby violates §5.01(b) of the Texas Racing Act, which states that the commission shall annually prescribe reasonable license fees for each category of license. The commission disagrees with the comment and responds that the fee is reasonable in comparison to the total cost of regulating the industry and the inactive licensees' share of the indirect expenses associated with that regulation. The commission further responds that the amount of the inactive license fees is reasonable in comparison to the active license fees when the commission takes into consideration the overall contributions made by active licensees.

The second commenter expressed concern that the rule assessed the same license fee for active greyhound racetracks, regardless of the length of the racing season. The commenter requested that the rule be modified to reduce the proposed annual fee for greyhound racetracks conducting fewer than six months of live racing. The commission disagrees with the comment and responds that, unlike the live racing fees, the annual active license fees are designed to be a flat fee.

Three additional commenters supported the fee increases, but requested that the commission revisit the issue before the next fiscal year to determine whether the fees could be adjusted to be more equitable for all the stakeholders. The commission agrees with this comment and will convene a working group for this purpose.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02 which authorizes the Commission to make rules relating exclusively to horse and greyhound racing; §5.01, which authorizes the Commission to prescribe reasonable license fees for each category of license; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; and §6.18, which authorizes the Commission to prescribe a reasonable annual fee to be paid by each racetrack licensee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 5, 2007.

TRD-200700863

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: March 25, 2007

Proposal publication date: December 29, 2006

For further information, please call: (512) 833-6699



TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §1.145

The Texas Board of Architectural Examiners adopts an amendment to §1.145 of Chapter 1, Subchapter H, pertaining to professional conduct. The proposal to amend this rule was published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10503). The amendment is being adopted without changes, and the text will not be republished.

The amendment to §1.145 requires an architect to promptly notify a prospective client or employer of any business association or financial interest of the architect which might reasonably appear to affect the architect's judgment in a manner which would jeopardize the interests of the client or employer. Currently, the section requires architects to disclose potential conflicts of interest with current, not potential, clients or employers. The amendment deletes a requirement that the architect either terminate the business association or financial interest or forego the project or employment unless the client or employer renders written consent to the conflict of interest after full disclosure. The amendment modifies a prohibition upon architects soliciting or accepting financial or other valuable consideration, material favors, or other benefits of any substantial nature from a supplier of materials or equipment, a contractor, or a consultant in connection with a project upon which the architect is performing or has contracted to perform architecture services. The prohibition allows the architect to solicit or receive financial and other consideration, benefits, and favors if the circumstances are disclosed to all parties.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.001(7)(F), Texas Occupations Code Annotated, which defines the term "practice of architecture" to include providing expert testimony for purposes of Chapter 1051, Texas Occupations Code Annotated, relating to the regulation of architecture; §1051.208, Texas Occupations Code Annotated, which requires the Board to adopt by rule standards of conduct for its registrants; §1051.752(6), Texas Occupations Code Annotated, which specifies that an architect is subject to disciplinary action for dishonest practices in the practice of architecture; and §1051.202, Texas Occupations Code Annotated, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2007.

TRD-200700926

Cathy L. Hendricks, RID/ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: March 29, 2007

Proposal publication date: December 29, 2006

For further information, please call: (512) 305-8544



SUBCHAPTER K. PRACTICE; ARCHITECT REQUIRED

22 TAC §1.210

The Texas Board of Architectural Examiners adopts new §1.210 to Chapter 1, Subchapter K, pertaining to architectural practice. The proposal to adopt this rule was published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10505). The new rule is being adopted with changes.

New §1.210, relating to the practice of architecture, defines the term "architectural plans and specifications" as that term is used in §§1051.551, 1051.606, and 1051.703, Texas Occupations Code Annotated, which provide, respectively: that building officials may accept architectural plans and specifications for permitting only if they bear the seal of an architect; architectural plans and specifications for certain projects may be prepared by one who is not an architect so long as that person does not use a form of the title "architect;" and that an architect must prepare the architectural plans and specifications for institutional residential facilities and certain buildings owned by the state or a political subdivision of the state if the building is to be used for education, office occupancy, or assembly. Under §1.210 the education, training, and experience described by board rule for registration as an architect are necessary to perform the services and work described in the rule. The section also lists architectural plans and specifications that are not exclusively architectural plans and specifications in subsection (c). Subsection (c) acknowledges that the education, training, and experience of an architect or an engineer are necessary to adequately prepare the listed plans and specifications. Finally, the section specifies that it does not address the services rendered by landscape architects or interior designers. The effect of the section is to clarify what designs are architectural plans and specifications in order to implement the referenced statutes.

The board made the following changes to §1.210(b) as proposed: a technical correction of a clerical error which listed site plans twice, the board deleted "wall sections" from paragraph (2) relating to floor plans and inserted "detailed wall sections" in paragraph (3) relating to building cross sections; the board revised paragraph (10) to replace a reference to the term "shop drawings" with "manufacturer or fabricator drawings that are integrated into and become part of the construction documents;" paragraph (11) was amended to describe architectural specifications as descriptions of materials for construction. The board adopted a technical amendment to subsection (c) to insert the word "following" at the start of the list of items in that paragraph. The board amended paragraph (1) of subsection (c) to include

site drainage as an element depicted within site plans. Paragraph (2) of subsection (c) was amended to further describe building systems that were listed in the proposed rule as those building systems in plan views, cross sections, and details of components and assemblies including parts of the building exposed to water infiltration or fire-spread consideration. The substance of paragraphs (3) and (4) of subsection (c) were consolidated into paragraph (2).

The board received public comment from the Texas Society of Architects and three individuals in favor of the rule and suggesting amendments to it. The Texas Society of Professional Engineers, the Texas Board of Professional Engineers, and three individuals submitted public comment opposed to the rule. A summary of each comment and the board's response follows:

Comment. The proposed rule attempts to exclusively describe the practice of architecture without any acknowledgment or reference to the practice of comprehensive building design by licensed professional engineers as acknowledged by the Texas Board of Professional Engineers. This is a restraint of trade and an attempt to disqualify engineers in the practice of their profession.

Board Response. The board disagrees. The proposed rule acknowledges that certain architectural plans and specifications are also engineering plans and specifications. Structural, electrical, and mechanical plans requiring engineering education, training, and experience are not listed as architectural plans and specifications. The board also acknowledges an exception to Chapter 1051, Texas Occupations Code Annotated, which allows engineers to plan and supervise work on a construction project primarily intended for an engineering use, such as railroads, hydroelectric plants, industrial plants, and structures incidental to such a construction project. However, the board disagrees with the commentator's premise that the complete and comprehensive design of any building is engineering. Attorney General Opinion GA-391 held that an opinion issued by the Texas Board of Professional Engineers was incorrect in holding that the law conclusively establishes building design as an element of engineering. The Texas Board of Professional Engineers thereafter rescinded that opinion. Long before that opinion was issued, the Attorney General recognized limitations to the scope of engineering in the design of a building. Attorney General Opinion C-791 (December 28, 1966) concluded that engineering plans are those which require the application of structural, electrical, or mechanical engineering principles and data but that the overall design of a building is generally recognized to be architecture. The policy advisory committee of the Texas Board of Professional Engineers reached the same conclusion in an advisory letter issued on August 14, 2006. The advisory directive held that the parts of a building that must be designed by an engineer are those building systems that require the application of engineering principles, specifically structural, electrical, and mechanical systems in a building. The advisory did not conclude that the entire building is engineering. On another occasion, the Board of Professional Engineers specified discrete aspects of building design that are engineering in the repair or replacement of a roof.

The rule does not impose a restraint of trade upon engineers because the scope of the practice of engineering does not include architecture. Attorney General Opinion GA-391 explicitly held that architecture and engineering are distinct professions which overlap but that engineering does not subsume architecture. As noted above, Attorney General Opinion C-791 recognized a lim-

itation in the scope of engineering years before there was an architectural practice act. The board does not agree that it has violated or is even subject to any state or federal antitrust laws banning restraints upon trade.

Comment. By defining architectural plans and specifications, the board exceeded its statutory authority.

Board Response. The board disagrees. Section 1051.202, Texas Occupations Code Annotated, grants the Board the authority to adopt rules to carry out Chapter 1051, Texas Occupations Code, regulating the practice of architecture. Section 1051.001(7), Texas Occupations Code Annotated, defines the term "practice of architecture" broadly, to include the application of the art and science of developing design concepts, planning for functional relationships and intended uses, establishing the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building and its environs intended for human use or occupancy the proper application of which requires education, training, and experience in those matters; establishing and documenting the form, aesthetics, materials, and construction technology for the construction or alteration of a building or group of buildings; and preparing or supervising and controlling the preparation of architectural plans and specifications that include all integrated building systems and construction details. There is no particular service or work described in the rule as "architectural" that is not within the scope of the practice of architecture as defined. The Board is within its jurisdiction.

Comment. By specifying architectural plans and specifications that are also engineering plans and specifications, the board exceeded its authority and seeks to define the scope of the practice of engineering in building design.

Board Response. The board disagrees that it exceeded its authority and that it is attempting to regulate another profession. Attorney General Opinion GA-391 addressed the authority of the Texas Board of Professional Engineers to issue an advisory opinion holding building design, which includes architecture, is within the scope of the practice of engineering. The Attorney General stated "chapters 1001 and 1051 define the practice of engineering and the practice of architecture one in relation to the other. For that reason, it is not inappropriate for the TBPE to consider chapter 1051 in an advisory opinion about the practice of engineering." Attorney General Opinion GA-391 at page 3, footnote 11. In short, the Attorney General reasoned that the Board of Professional Engineers did not exceed its authority in the issuance of its advisory opinion though the substance of the opinion was incorrect. It is likewise not inappropriate for the Board of Architectural Examiners to consider chapter 1001 in determining the scope of the practice of architecture.

Furthermore, the plans and specifications that are within the overlap of the practice of architecture and the practice of engineering are record documents of architectural services and work. As such, they are within the jurisdiction of the board subject to board rules such as those relating to sealing, recklessness, and competent practices. If a particular service or work is beyond the jurisdiction of the board merely because it happens to coincidentally be a service or work that is engineering, it would follow that the same service or work would be beyond the jurisdiction of the Board of Professional Engineers-leaving those practices unregulated when rendered by an architect or an engineer. It would be an anomalous result if a particular practice were immune from regulation by either board because it fits within the regulated practices of both boards.

If the board had designated the listed plans and specifications as exclusively architectural plans and specifications, it would have exceeded its jurisdiction. If the board made no reference to the plans listed as architecture and engineering plans, the rule would have been ambiguous as applied to the unlisted plans. Failing to list those plans might also be construed as an abdication of the board's regulatory authority over the services and work performed in preparing them. By acknowledging that some architectural plans and specifications are coincidentally engineering plans and specifications the board abstained from the regulation of another profession. Failing to acknowledge the overlap would result in the assertion of jurisdiction beyond the board's authority.

The board disagrees that it "unilaterally" sought to define the overlap of the professions. The board made a careful study of the advisory opinions and rules of the Texas Board of Professional Engineers in determining plans and specifications that are exclusively architecture and those that are coincidentally engineering. The board also noted enforcement actions by the Board of Professional Engineers against architects for preparing structural, electrical, and mechanical elements of a building but not for the complete and comprehensive design of the building. Furthermore, the staff of both agencies jointly conducted a series of meetings which included input from professors of architecture and architectural engineering as well as practitioners of architecture and engineering. At the conclusion of the series of meetings, the staffs reached an agreement on the plans and specifications that are architecture, those that are engineering, and those which are coincidentally architecture and engineering. This was not a unilateral exercise.

Comment. Attorney General Opinion DM-161 and Attorney General Opinion GA-391 recognize that professional engineers are licensed to completely and comprehensively design buildings pursuant to Chapter 1001, Texas Occupations Code Annotated. The Texas Board of Professional Engineers licensed engineers to completely and comprehensively design buildings long before there was an architectural practice act.

Board Response. Attorney General Opinion DM-161 states that an engineer may prepare building designs to the extent that the designs require the application of engineering principles and the interpretation of engineering data. The Board of Architectural Examiners asked the Attorney General if this Opinion is properly construed as holding that engineers may completely and comprehensively design buildings. In Attorney General Opinion GA-391, the Attorney General held that it did not and interpretations to that effect are incorrect. Attorney General Opinion DM-161 as clarified by Attorney General Opinion GA-391 holds that engineers may render services or work in the design of a building only to the extent that the adequate performance of those services or work require engineering education, training, and experience.

An Attorney General Opinion issued in 1966 held that the scope of engineering practice in the design of a building is limited to structural, electrical, and mechanical engineering. See Attorney General Opinion C-791. In 1940, Attorney General Opinion O-2417 held that the complete design of a building fits squarely within the practice of architecture so that an architect is not subject to the penal provisions within the engineering act. The scope of the practice of engineering did not include the complete design of buildings before or after the adoption of an architectural practice act.

Comment. The rule is based upon an agreement reached between the staff of the Texas Board of Professional Engineers and the staff of the Texas Board of Architectural Examiners. The agreement was part of a broader discussion relating to grandfathering engineers as architects, allowing graduates of engineering and architecture programs to seek licensure in the other profession, and use of the title "architectural engineer." Adoption of the rule is out of context.

Board Response. Initial drafts of the rule had been prepared prior to the joint effort to reach agreement. The agreement was modeled on the rule, not the other way around. The Board of Architectural Examiners endorsed the agreement of the agencies and commended the agreement to the Texas Board of Professional Engineers for approval subject to the understanding that revisions may be necessary by agreement between the boards. The Board of Architectural Examiners is willing to discuss reasonable solutions to the issues raised by the Board of Professional Engineers. The Board of Architectural Examiners will consider amendments to the rule in accordance with any reasonable agreement reached. However, the board sees no reason to delay adoption of the rule until the conclusion of what may be prolonged negotiations on other matters. The board sees the rule as necessary to protect the public health, safety, and welfare.

Comment. The substance of the rule is within the jurisdiction of the joint advisory committee on the practice of architecture, engineering, and landscape architecture but did not originate with the committee and was not heard by it. Adoption of the rule is premature until the joint advisory committee acts upon it.

Board Response. The board would have preferred an advisory opinion from the joint advisory committee proposing amendments to both agencies' rules in a coordinated fashion. On March 7, 2006, representatives of the Board of Architectural Examiners sought a statement that the boards would work together in coordinating a revision of each board's rules regarding the overlap of the professions as part of a joint statement then under consideration by the committee. The statement was not included within the broader statement issued by the committee. The Board of Professional Engineers, though aware that the rule was under consideration, never requested that it be referred to the joint advisory committee. The Board of Architectural Examiners hopes that an agreement may yet be reached through the joint advisory committee. However, it does not agree that approval by the committee is a jurisdictional prerequisite for the adoption of the rule. Adoption of a rule without a hearing before the joint advisory committee is not unprecedented. The Board of Professional Engineers has taken action on matters that affect both professions without a hearing by the joint advisory committee over the objections of the Board of Architectural Examiners.

Comment. The rule is not based upon the protection of the public health, safety, and welfare; it is based upon serving other economic interests. The rule is intended only to promote one profession over the other.

Board Response. The sole purpose of the rule is to protect public health, safety, and welfare. In 1989 the legislature required architectural plans and specifications for certain buildings in excess of a certain size and certain building intended for assembly, education, office use, or 24-hour custodial care be prepared by an architect. The legislature defined the term "practice of architecture" by reference to the education, training, and experience of an architect. The legislature clearly determined that the public health, safety, and welfare is served by mandating architects, re-

lying upon their education, training, and experience, prepare the architectural aspects of buildings intended for human use. The rule specifies those aspects of a building design that architects are educated, trained, and experienced to prepare are architectural. The rule will ensure that qualified architects prepare aspects of buildings that relate to ingress, circulation, egress, and human use which protects public health, safety, and welfare. The rule does not enlarge the scope of the practice of architecture nor does it restrict the practice of engineering. The rule does not promote one profession over another.

Comment. The preamble to the proposed rule is false and misleading in that it does not reflect the fiscal impact upon engineers and small and micro-business engineering firms that are lawfully completely and comprehensively designing buildings.

Board Response. Engineers may lawfully completely design buildings exempt from Chapter 1051, Texas Occupations Code Annotated. The rule will not affect these circumstances in which an engineer may lawfully completely design a building. However, as noted in Attorney General Opinion GA-391, the exemptions for engineers in the architectural practice act do not entitle engineers to fully engage in the practice of architecture so that an engineer may completely design any building. The Attorney General Opinion also noted that architecture is a distinct profession from engineering. Engineers are not licensed to practice architecture. The rule implements laws that were enacted in 1989 which require an architect to prepare architectural plans and specifications for certain buildings and require building officials to accept architectural plans and specifications for those buildings only if they were prepared by an architect. The legislative bill analyses from the 72nd Legislature noted that this legislation would require architects to design buildings intended for human occupancy. The sponsor of the bill stated it would require architects to design buildings for human use and occupancy. A licensed professional engineer who was a legislator noted that the bill would require an architect as well as an engineer to design the buildings over the thresholds specified in the bill which are now within Chapter 1051. This legislator expressed support for the bill stating that the architect is necessary for the design of those buildings over that threshold. It is clear from the law and the legislative record that engineers were restricted from preparing architectural plans and specifications for certain buildings as of 1989 when these laws took effect. The rule will have no economic effect upon an engineer who lawfully prepares a complete and comprehensive design of a building to the extent permitted since 1989.

Comment. The rule will create confusion for building officials.

Board Response. The board disagrees. By specifying in detail the designs within plans and specifications that are architecture, the rule will provide clarification for building officials. The rule will assist building officials to comply with the statutory requirement that they accept architectural plans and specifications only if they have been prepared by an architect as evidenced by an architectural seal on them. The rule was prompted in part in response to a comment the board received from a representative of a municipality that was being sanctioned by the Board of Professional Engineers for accepting engineering plans as architectural plans. The representative expressed frustration because the distinction between architectural and engineering plans is not clear under the law and has not been clarified by the boards.

Comment. The rule includes a cross-reference to §1.21 which lists current criteria for registration as an architect. Would the rule prohibit the preparation of plans and specifications by an

architect who became registered prior to 1960 under an earlier version of the board's enabling law which allowed for registration without examination under certain circumstances?

Board Response. The rule would not prohibit the practice of architecture by an architect registered pursuant to the laws in effect at the time he or she became registered. The current version of §1.21 allows for the registration of a person subject to the requirements in effect at the time they began their architectural education assuming education was commenced prior to 1999.

Comment. The rule should not list site planning as architecture in subsection (b)(1). Engineers prepare site plans and plans for site drainage.

Board Response. The board eliminated site plans from subsection (b) and amended the rule to include reference to planning for site drainage as part of site planning within subsection (c) of the rule which acknowledges that site plans are engineering as well as architectural plans.

Comment. The rule has a technical error within the introductory language of subsection (c).

Board Response. The board agrees and amended the rule to include the word "following" within the subsection.

Comment. References to building cross sections should not be included within the subparagraph relating to floor plans.

Board Response. The board agrees and amended the rule accordingly.

Comment. The rule should not list shop drawings as architectural plans.

Board Response. The rule is amended to delete references to shop drawings and instead refers to manufacturers' drawings incorporated into architectural plans.

The new rule is adopted pursuant to §1051.001(7), Texas Occupations Code Annotated, which defines the term "practice of architecture;" §1051.202, Texas Occupations Code Annotated, which grants authority to the Board to adopt rules necessary to administer or enforce the Architects' Registration Law; §1051.701, Texas Occupations Code Annotated, which requires a person to be registered as an architect to engage in the practice of architecture; and §1051.801(a), Texas Occupations Code Annotated, which prohibits one who is not registered as an architect from engaging in, or offering or attempting to engage in, the practice of architecture.

§1.210. Architectural Plans and Specifications.

(a) Architectural education, training and experience as described in §1.21 and §1.191 of this title are necessary prerequisites to the preparation of architectural plans and specifications for the construction, enlargement, or alteration of a building intended for human use and occupancy. Generally, architectural plans and specifications are instructions that integrate and coordinate the design of all building systems and related site components necessary for constructing a building and its environs intended for human use and occupancy. Architectural plans and specifications detail the form, function, construction, habitability, and appearance of the building and the manner in which humans enter, exit, circulate, and use the interior space of the building and its external environs. It is the role of the Architect to coordinate with consultants in the design of a building intended for human use and occupancy in order to integrate all components and systems of the building and its environs.

(b) For purposes of §§1051.551, 1051.606, and 1051.703 of the Texas Occupations Code, the term "architectural plans or specifications" means a Construction Document that depicts in detail the design of the spatial relationships and the quality of materials and systems required for the construction of a building and its environs. The term includes:

(1) Floor plans and details depicting the design of internal and external walls, the design of the internal spaces of the building, and the design of vertical circulation systems including accessibility ramps, stair systems, elevators and escalators, which plans implement programming, regulatory, and accessibility requirements;

(2) General cross sections and detailed wall sections depicting building components from a hypothetical cut line through a building to include the building's mechanical, electrical, plumbing or structural systems;

(3) Roof plans and details depicting the design of roof system materials, components, drainage, slopes, directions, and location of roof accessories and equipment not involving structural engineering calculations;

(4) The design of details of components and assemblies specifically including any part of a building exposed to water infiltration or fire-spread considerations;

(5) Reflected ceiling plans and details depicting the design of the location, materials, and connections of the ceiling to the structure and the integration of the ceiling with electrical, mechanical, lighting, sprinkler and other building systems;

(6) Finish plans or schedules depicting surface materials on the interior and exterior of the building;

(7) Interior and exterior elevations depicting the design of materials, locations and relationships of components and surfaces;

(8) Partition, door, window, lighting, hardware and fixture schedules;

(9) Manufacturer or fabricator drawings that are integrated into and become part of the Construction Documents;

(10) Specifications describing the nature, quality, and execution of materials for construction of the elements of the building depicted in the plans prepared by the Architect; and

(11) Life safety plans and sheets with code analyses.

(c) Notwithstanding the thresholds within Chapters 1001 and 1051, Texas Occupations Code, the following plans and specifications may be prepared by a person who is registered as an Architect or licensed as a professional engineer in the State of Texas:

(1) Site plans depicting the location and orientation of the building on the site based upon a determination of the interrelationship of the intended use with the environment, topography, vegetation, climate, geographic aspects, and the legal aspects of site development, including setback requirements, zoning and other legal restrictions as well as surface drainage;

(2) The depiction of the building systems such as structural, mechanical, electrical, and plumbing systems in plan views, in cross sections depicting building components from a hypothetical cut line through a building, and in details of components and assemblies specifically including any part of a building exposed to water infiltration or fire-spread considerations;

(3) Life safety plans and sheets with code analyses; and

(4) Plans for a building that is not intended for human use or occupancy.

(d) This section does not address the services or work that may otherwise be offered or rendered by Interior Designers or Landscape Architects.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2007.

TRD-200700927

Cathy L. Hendricks, RID/ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: March 29, 2007

Proposal publication date: December 29, 2006

For further information, please call: (512) 305-8544



CHAPTER 3. LANDSCAPE ARCHITECTS

SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §3.145

The Texas Board of Architectural Examiners adopts an amendment to §3.145 of Title 22, Chapter 3, Subchapter H, pertaining to professional conduct. The proposal to amend this rule was published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10507). The amendment is being adopted without changes, and the text will not be republished. The amendment to §3.145 requires a landscape architect to promptly notify a prospective client or employer of any business association or financial interest of the landscape architect which might reasonably appear to affect the landscape architect's judgment in a manner which would jeopardize the interests of the client or employer. Currently, the section requires landscape architects to disclose potential conflicts of interest with current, not potential, clients or employers. The amendment deletes a requirement that the landscape architect either terminate the business association or financial interest or forego the project or employment unless the client or employer renders written consent to the conflict of interest after full disclosure. The amendment modifies a prohibition upon landscape architects soliciting or accepting financial or other valuable consideration, material favors, or other benefits of any substantial nature from a supplier of materials or equipment, a contractor, or a consultant in connection with a project upon which the landscape architect is performing or has contracted to perform landscape architecture services. The prohibition allows the landscape architect to solicit or receive financial and other consideration, benefits, and favors if the circumstances are disclosed to all parties.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202, Texas Occupations Code Annotated, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities and §1051.208, Texas Occupations Code Annotated, which requires the Board to adopt by rule standards of conduct for its registrants.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200700929

Cathy L. Hendricks, RID/ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

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For further information, please call: (512) 305-8544



CHAPTER 5. INTERIOR DESIGNERS

SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §5.155

The Texas Board of Architectural Examiners (Board) adopts an amendment to §5.155 of Title 22, Chapter 5, Subchapter H, pertaining to professional conduct. The proposal to amend this rule was published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10508). The amendment is being adopted without changes, and the text will not be republished. The amendment to §5.155 requires an interior designer to promptly notify a prospective client or employer of any business association or financial interest of the interior designer which might reasonably appear to affect the interior designer's judgment in a manner which would jeopardize the interests of the client or employer. Currently, the section requires interior designers to disclose potential conflicts of interest with current, not potential, clients or employers. The amendment deletes a requirement that the interior designer either terminate the business association or financial interest or forego the project or employment unless the client or employer renders written consent to the conflict of interest after full disclosure. The amendment modifies a prohibition upon interior designers soliciting or accepting financial or other valuable consideration, material favors, or other benefits of any substantial nature from a supplier of materials or equipment, a contractor, or a consultant in connection with a project upon which the interior designer is performing or has contracted to perform interior design services. As amended, the prohibition allows the interior designer to solicit or receive financial and other consideration, benefits, and favors if the circumstances are disclosed to all parties.

The agency received no comments concerning the proposal to amend this rule.

The amendment is adopted pursuant to §1051.202, Texas Occupations Code Annotated, which provides the Board with general authority to promulgate rules necessary to the administration of its statutory responsibilities and §1051.208, Texas Occupations Code Annotated, which requires the Board to adopt by rule standards of conduct for its registrants.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 9, 2007.

TRD-200700930

Cathy L. Hendricks, RID/ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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Proposal publication date: December 29, 2006
For further information, please call: (512) 305-8544



PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.13

The Texas Appraiser Licensing and Certification Board adopts amendments to §153.13, concerning Educational Requirements without changes to the proposed text as published in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8171) and will not be republished.

The amendments to §153.13 removes the requirement that qualifying education courses must be specifically approved by the Board, removes the requirements that a minimum number of hours must be in specific fundamental real estate courses, removes an outdated statutory reference, and specifies that course subject matter must be appraisal related.

No comments were received.

The amendments are adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Texas Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2007.

TRD-200700880
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Effective date: March 27, 2007
Proposal publication date: September 29, 2006
For further information, please call: (512) 465-3959



22 TAC §153.17

The Texas Appraiser Licensing and Certification Board adopts amendments to §153.17, concerning Renewal or Extension of Certification and License or Renewal of Trainee Approval without changes to the proposed text as published in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8172) and will not be republished.

The amendments to §153.17 permits continuing education required for renewals to be deferred for 180 days for licensed or

certified appraisers on active duty in the United States armed forces and adds an amendment relating to identity theft that provides a procedure for the issuance of a new license when the Board has determined that a licensee has been a victim of identity theft.

No comments were received.

The amendments are adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Texas Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2007.

TRD-200700881
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Effective date: March 27, 2007
Proposal publication date: September 29, 2006
For further information, please call: (512) 465-3959



22 TAC §153.18

The Texas Appraiser Licensing and Certification Board adopts amendments to §153.18, subsections (b)(1)(A), (b)(1)(B) and (c), concerning Appraiser Continuing Education without changes to the proposed text as published in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8172), and it will not be republished.

The adopted amendments to §153.18 removes the requirement that the board must have specifically approved an annual renewal education course as a fundamental course for appraiser trainees renewing an authorization that was issued prior to March 1, 2006, and permits continuing education requirements for appraiser trainees on active duty in the United States armed forces to be deferred for a period up to 180 days upon return to civilian status.

No comments were received.

The amendments are adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, concerning Rules Relating to Certification and Licenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2007.

TRD-200700882
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Effective date: March 27, 2007
Proposal publication date: September 29, 2006
For further information, please call: (512) 465-3959

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22 TAC §153.23

The Texas Appraiser Licensing and Certification Board adopts amendments to §153.23, Inactive Certificate or License, without changes to the proposed text as published in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8173), and it will not be republished.

The adopted amendment to §153.23 requires an appraiser whose certification or license has been inactive to satisfy all appraiser continuing education requirements that were not completed while on inactive status before they can return to active status.

No comments were received.

The amendments are adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151 Rules Relating to Certification and Licenses.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2007.

TRD-200700883

Wayne Thorburn

Commissioner

Texas Appraiser Licensing and Certification Board

Effective date: March 27, 2007

Proposal publication date: September 29, 2006

For further information, please call: (512) 465-3959

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 201. LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

22 TAC §201.16

The Texas Funeral Service Commission (commission) adopts an amendment to §201.16, concerning Memorandum of Understanding with the Texas Department of Health.

The amendment is adopted without change to the proposed text as published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10511) and will not be republished. The adoption changes the name of the title of the rule due to the change in name of the Texas Department of Health to the Texas Department of State Health Services (department).

The commission received no comments.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2007.

TRD-200700915

O.C. Robbins

Executive Director

Texas Funeral Service Commission

Effective date: March 28, 2007

Proposal publication date: December 29, 2006

For further information, please call: (512) 936-2466

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CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.30

The Texas Funeral Service Commission (commission) adopts an amendment to §203.30, concerning Continuing Education.

The amendment is adopted without changes to the proposed text as published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10511) and will not be republished.

The amendment is adopted to ensure continuing education offered by an approved provider is open to all licensees and to clarify the credit hour eligibility regarding required hours.

The commission received no comments.

The amendment is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2007.

TRD-200700917

O.C. Robbins

Executive Director

Texas Funeral Service Commission

Effective date: March 28, 2007

Proposal publication date: December 29, 2006

For further information, please call: (512) 936-2466

◆ ◆ ◆
22 TAC §203.38

The Texas Funeral Service Commission (commission) adopts a new rule, §203.38, relating to reinstatement of funeral director and/or embalmer licenses.

The new rule is adopted without changes to the proposed text as published in the December 29, 2006, issue of the *Texas Register* (31 TexReg 10512) and will not be republished.

The new rule prohibits persons whose funeral director's and/or embalmer's license has been revoked or cancelled through disciplinary action by the commission from petitioning the commission for reinstatement for five years, unless another time period is provided for in a board order. It establishes guidelines for considering petitions.

The commission received no comments.

The new rule is adopted under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 8, 2007.

TRD-200700918

O.C. Robbins

Executive Director

Texas Funeral Service Commission

Effective date: March 28, 2007

Proposal publication date: December 29, 2006

For further information, please call: (512) 936-2466



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 519. TECHNICAL ASSISTANCE

SUBCHAPTER A. TECHNICAL ASSISTANCE PROGRAM

31 TAC §519.9

The Texas State Soil and Water Conservation Board (TSSWCB) adopts an amendment to §519.9 to make the rule consistent with appropriation restrictions concerning how the agency is required to disburse state funds to soil and water conservation districts (SWCDs). The amendment is adopted without change to the proposed text as published in the October 20, 2006, issue of the *Texas Register* (31 TexReg 8618) and will not be republished. The section brings agency procedures into compliance with appropriations directives.

The section establishes that the TSSWCB will provide notice to SWCDs of the amount allocated to them rather than cause 25 percent of their allocation to be sent to them at the beginning of the fiscal year and provides that the funds will be paid on a reimbursement basis.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Agriculture Code of Texas, title 7, Chapter 201, §201.020, which authorizes the TSSWCB to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 12, 2007.

TRD-200700936

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Effective date: April 1, 2007

Proposal publication date: October 20, 2006

For further information, please call: (512) 773-2250 x252



TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 103. CALCULATIONS OR TYPES OF BENEFITS

34 TAC §103.3

The Texas County and District Retirement System adopted an amendment to §103.3, concerning the beneficiary designations and payment elections requiring spousal consent. This amended rule is adopted without changes to the proposed text as published in the January 26, 2007, issue of the *Texas Register* (32 TexReg 284). The adopted amendment deletes the requirement that a member not eligible for retirement certify to the member's current marital status on any document filed with the system on which the member makes a beneficiary designation or benefit payment election and deletes the requirement that a member not eligible for retirement obtain the consent of the member's spouse on any document with the system on which the member designates a person other than the member's spouse as sole primary beneficiary. The spousal consent requirements are unchanged with respect to withdrawal or retirement applications filed by a member who is eligible for retirement.

No comments were received regarding the adoption of this amendment.

The rule is adopted under the Government Code, §844.010, which authorizes the board of trustees of the Texas County and District Retirement System to adopt rules with respect to spousal consent requirements and §845.102, which provides the board of trustees with the authority to adopt rules necessary or desirable for efficient administration of the system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2007.

TRD-200700910

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Effective date: March 27, 2007

Proposal publication date: January 26, 2007

For further information, please call: (512) 328-8889



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 98. ADULT DAY CARE AND DAY ACTIVITY AND HEALTH SERVICES REQUIREMENTS

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts amendments to §§98.2, 98.11 - 98.23, 98.41 - 98.44, 98.81 - 98.84, 98.92 - 98.95, 98.102 - 98.104, and 98.202 - 98.212 in Chapter 98, governing Adult Day Care and Day Activity and Health Services Requirements, without changes to the proposed text published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10273).

The amendments are adopted to update references in the rules to the National Fire Protection Association's Life Safety Code from the 1988 edition to the 2000 edition.

In addition, the amendments are adopted to update terminology and agency names and to correct rule cross-references to ensure that the rule reflects changes resulting from the consolidation of health and human services agencies in 2004 and to update the sections to make them consistent with other DADS rules.

DADS received no comments regarding adoption of the amendments.

SUBCHAPTER A. INTRODUCTION

40 TAC §98.2

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, Chapter 103, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of adult day care facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2007.

TRD-200700898

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: April 1, 2007

Proposal publication date: December 22, 2006

For further information, please call: (512) 438-4162



SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §§98.11 - 98.23

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, Chapter 103, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of adult day care facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2007.

TRD-200700899

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: April 1, 2007

Proposal publication date: December 22, 2006

For further information, please call: (512) 438-4162



SUBCHAPTER C. FACILITY CONSTRUCTION PROCEDURES

40 TAC §§98.41 - 98.44

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, Chapter 103, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of adult day care facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2007.

TRD-200700900

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: April 1, 2007

Proposal publication date: December 22, 2006

For further information, please call: (512) 438-4162



SUBCHAPTER E. INSPECTIONS, SURVEYS, AND VISITS

40 TAC §§98.81 - 98.84

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, Chapter 103, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of adult day care facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2007.

TRD-200700901

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: April 1, 2007

Proposal publication date: December 22, 2006

For further information, please call: (512) 438-4162



SUBCHAPTER F. ABUSE, NEGLECT, AND EXPLOITATION: COMPLAINT AND INCIDENT REPORTS AND INVESTIGATIONS

40 TAC §§98.92 - 98.95

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated

by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, Chapter 103, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of adult day care facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2007.

TRD-200700902

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: April 1, 2007

Proposal publication date: December 22, 2006

For further information, please call: (512) 438-4162



SUBCHAPTER G. ENFORCEMENT

40 TAC §§98.102 - 98.104

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, Chapter 103, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of adult day care facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2007.

TRD-200700903

Kenneth L. Owens

General Counsel

Department of Aging and Disability Services

Effective date: April 1, 2007

Proposal publication date: December 22, 2006

For further information, please call: (512) 438-4162



SUBCHAPTER H. DAY ACTIVITY AND HEALTH SERVICES (DAHS) CONTRACTUAL REQUIREMENTS

40 TAC §§98.202 - 98.212

The amendments are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, Chapter 103, which provides the Aging and Disability Services Council with the authority to make recommendations regarding rules governing licensing and regulation of adult day care facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on March 7, 2007.

TRD-200700904
Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
Effective date: April 1, 2007
Proposal publication date: December 22, 2006
For further information, please call: (512) 438-4162

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan--Revised

Texas Education Agency

Title 19, Part 2

TRD-200700968

Filed: March 13, 2007



Proposed Rule Review

Texas State Soil and Water Conservation Board

Title 31, Part 17

The Texas State Soil and Water Conservation Board files this notice of intent to review Title 31, Part 17, Chapter 520, Subchapter A, §§520.1 - 520.6, Election Procedures, of the Texas Administrative Code in accordance with the Texas Government Code, §2001.039. The agency finds that the reason for adopting the rules continues to exist.

As required by §2001.039, Government Code, the agency will accept comments and make a final assessment regarding whether the reason for adopting the rules continues to exist. The comment period will last 30 days beginning with the publication of this notice of intent to review.

Comments or questions regarding this rule review may be submitted to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, by e-mail to risom@tss-wcb.state.tx.us, or by facsimile at (254) 773-3311.

§520.1. Policy Statement.

§520.2. Definitions.

§520.3. District Conducted Elections; Notice.

§520.4. State Board Conducted District Elections; Notice.

§520.5. Election Forms; Reporting.

§520.6. Adherence to Rules Required.

TRD-200700988

Mel Davis

Special Projects Coordinator

Texas State and Soil Water Conservation Board

Filed: March 13, 2007



Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 62, Commissioner's Rules Concerning the Equalized Wealth Level, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 62 in the October 13, 2006, issue of the *Texas Register* (31 TexReg 8577).

The TEA finds that the reasons for adopting 19 TAC Chapter 62 continue to exist and readopts the rules. At a later date, the TEA will propose an amendment to 19 TAC §62.1071, Administration of Wealth Equalization, to reflect changes resulting from House Bill 1, 79th Texas Legislature, Third Called Session, 2006.

The TEA received no comments related to the rule review of 19 TAC Chapter 62.

This concludes the review of 19 TAC Chapter 62.

TRD-200700964

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: March 13, 2007



The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, Subchapter AA, Teacher Appraisal, and Subchapter BB, Administrator Appraisal, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 150, Subchapters AA and BB, in the December 8, 2006, issue of the *Texas Register* (31 TexReg 9855).

Relating to the review of 19 TAC Chapter 150, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. The TEA is proposing no changes to Subchapter AA at this time.

Relating to the review of 19 TAC Chapter 150, Subchapter BB, the TEA finds that the reasons for adopting Subchapter BB continue to exist and readopts the rules. The TEA is proposing no changes to Subchapter BB at this time.

The TEA received no comments related to the rule review of 19 TAC Chapter 150, Subchapters AA and BB.

This concludes the review of 19 TAC Chapter 150.

TRD-200700965

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: March 13, 2007

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The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 153, School District Personnel, Subchapter AA, Commissioner's Rules Concerning School District Personnel Duties and Benefits, and Subchapter CC, Commissioner's Rules on Creditable Years of Service, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 153, Subchapters AA and CC, in the December 8, 2006, issue of the *Texas Register* (31 TexReg 9855).

Relating to the review of 19 TAC Chapter 153, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rule. The TEA is proposing no changes to Subchapter AA at this time.

Relating to the review of 19 TAC Chapter 153, Subchapter CC, the TEA finds that the reasons for adopting Subchapter CC continue to exist and readopts the rules. Effective February 25, 2007, the rules in Subchapter CC were amended. Section 153.1021, Recognition of Creditable Years of Service, was amended to update references and provide clarification. Section 153.1022, Minimum Salary Schedule for Certain Professional Staff, was amended to update the minimum salary rates in accordance with House Bill 1, 79th Texas Legislature, Third Called Session, 2006. The TEA is proposing no additional changes to Subchapter CC at this time.

The TEA received no comments related to the rule review of 19 TAC Chapter 153, Subchapters AA and CC.

This concludes the review of 19 TAC Chapter 153.

TRD-200700966

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: March 13, 2007

◆ ◆ ◆
The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 161, Commissioner's Rules Concerning Advisory Committees, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 161 in the October 13, 2006, issue of the *Texas Register* (31 TexReg 8577).

The TEA finds that the reasons for adopting 19 TAC Chapter 161 continue to exist and readopts the rules. At the end of the 80th Texas Legislative Session, 2007, the TEA plans to propose an amendment to 19 TAC §161.1003, Advisory Committees, to reflect changes to the list of advisory committees.

The TEA received no comments related to the rule review of 19 TAC Chapter 161.

This concludes the review of 19 TAC Chapter 161.

TRD-200700967

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: March 13, 2007

◆ ◆ ◆
Department of Information Resources

Title 1, Part 10

Pursuant to Texas Government Code §2001.039, the Department of Information Resources (department) files this notice of readoption of Title 1, Texas Administrative Code, Chapter 201, §201.4, concerning "Historically Underutilized Business Program." The review was published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7579). No public comments were received regarding the review.

The department determined the reasons for adoption of the rule continue to exist. The rule is readopted without changes.

TRD-200700912

Renée Mauzy
General Counsel
Department of Information Resources
Filed: March 7, 2007

◆ ◆ ◆
Pursuant to Texas Government Code §2001.039, the Department of Information Resources (department) files this notice of readoption of Title 1, Texas Administrative Code, Chapter 201, §201.9, "Board Policies." The review was published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7579). No public comments were received regarding the review.

The department determined the reason for adoption of the rule continues to exist. The rule is readopted without changes.

TRD-200700911

Renée Mauzy
General Counsel
Department of Information Resources
Filed: March 7, 2007

◆ ◆ ◆
Pursuant to Texas Government Code §2001.039, the Department of Information Resources (department) files this notice of readoption of Title 1, Texas Administrative Code, Chapter 207, §§ 207.1 - 207.8, "Telecommunications Services Division." The review was published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7579). No public comments were received regarding the review.

The department determined the reasons for adoption of the rules continue to exist. The rules are readopted without changes.

TRD-200700913

Renée Mauzy
General Counsel
Department of Information Resources
Filed: March 7, 2007

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §255.4(c)

<u>Where the number of 9-1-1 capable telephone numbers (TNs) is:</u>	<u>The 9-1-1 emergency service fee amount to be collected and remitted equals:</u>
<u>1 to 10</u>	<u>#TNs x 9-1-1 Emergency Service Fee</u>
<u>11 to 100</u>	$\left(10 + \frac{\#TNs - 10}{4}\right) \times 9-1-1 \text{ Emergency Service Fee}$
<u>More than 100</u>	$\left(10 + \frac{\#TNs - 10}{3}\right) \times 9-1-1 \text{ Emergency Service Fee}$

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-7-11284. TBPC seeks a 5 year lease of approximately 3,835 square feet of office space in Sweetwater, Colorado City, or Snyder, Texas.

The deadline for questions is March 27, 2007 and the deadline for proposals is April 6, 2007 at 3:00 p.m. The award date is May 1, 2007. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/bid_show.cfm?bidid=69583.

TRD-200700978

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Filed: March 13, 2007

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of March 2, 2007, through March 8, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on March 14, 2007. The public comment period for these projects will close at 5:00 p.m. on April 13, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: Sterling Exploration and Production Company; Location: The project is located in Matagorda Bay, approximately 9.8 miles southeast of Port Lavaca, near the Matagorda Ship Channel and within State Tract (ST) 65. The project can be located on the U.S.G.S. quadrangle map titled: Keller Bay, Texas. Approximate UTM Coordinates

in NAD 27 (meters): Zone 14; Easting: 746335; Northing: 3160391. Project Description: The applicant proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities of the ST 65 N/2 No. 1 Well. Such activities include installation of typical slotted drilling barge, production structures and attendant facilities. CCC Project No.: 07-0125-F1; Type of Application: U.S.A.C.E. permit application #24429 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Franklin Jones III; Location: The project is located along West Galveston Bay, Mensell Bayou and the Spanish Grant Channel, at 12540 Stewart Road, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Lake Como, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 313507; Northing: 3235388. Project Description: The applicant proposes revised plans for the amendment of existing Department of the Army (DA) permit 22590, issued in 2003, for the Anchor Bay Subdivision. A public notice dated August 15, 2005, proposed an amendment to the existing permit, which involved a new entrance channel that would connect the Anchor Bay Subdivision to West Bay via Mensell Bayou. Subsequent to this notice, a water quality study was conducted by LEAP Engineering, L.L.C. and verified by the Corps of Engineers Engineer Research and Development Center, which compared circulation patterns and dissolved oxygen levels resulting from the previously authorized subdivision connection to West Bay via the Spanish Grant Canal to that which was proposed in the August 15, 2005, public notice. The study showed that the applicant's proposed replacement of the existing culverted road crossing on Camino Real Street with a free-span bridge, as mandated by the City of Galveston, will produce greater water quality benefits and circulation within and around the Spanish Grant Subdivision and Canal utilizing the previously authorized design, compared to utilization of the new design proposed in the last public notice. Based on this new information, the application for DA Permit Amendment 22590(03) was withdrawn. Revised plans have been submitted which now propose a refined Anchor Bay design that is based on the previously authorized subdivision entrance via Spanish Grant Channel. Minor design changes in the footprint of the development have occurred since issuance of the original permit as a result of coordination with the City of Galveston. DA Permit 22590 authorized filling of 1 acre and excavation of 0.21 acre of adjacent fresh to brackish wetland, and the excavation of 1.25 acres of adjacent tidal sand flat for the construction of the circulation channels. As compensation for these impacts, the permit authorized the preservation of 10.11 acres (8.94 acres of prairie uplands and 1.17 acres of brackish wetlands) to be protected in perpetuity by conservation easement, creation of tidal fringe wetlands along the Spanish Grant Canal and interior Anchor Bay canals, and creation of tidal fringe wetlands along each side of the two circulation channels leading to Mensell and Oxen Bayous. Elements of the basic plat as discussed, including the previously authorized mitigation, are still authorized.

The following permit modifications, as previously publicized in the August 15, 2005, public notice, are still proposed and are discussed

in detail below. These include widening Camino Real Road by 25 feet, converting an upland house lot along the Spanish Grant Canal into a boat basin, relocating a small inland pond, constructing three piers that extend into Mensell Bayou, replacing the type and location of the bridges to be constructed within the development, filling an additional 1.04 acres of wetland along the northern project boundary for roadway work (a result of the City of Galveston plat approval process) and modifying the previously authorized mitigation plan to include compensation for such impacts.

1. The widening of Camino Real Road will require filling approximately 625 square feet (0.01 acre) of wetland and 34,375 square feet (0.79 acre) of uplands that had been set aside as mitigation in the original permit. The culverted crossing on Camino Real will be replaced with a free-span bridge. The road-widening project is necessary to satisfy the traffic concerns and parking requirements for residents living along the road.

2. The new 130-foot-long, 75-foot-wide boat basin, constructed out of uplands located along the Spanish Grant Channel, will be excavated to a depth of minus 4 feet mean low water. It will contain a boat ramp and six 12-foot-wide boat slips with seven 2-foot-wide by 25-foot-long piers. Once completed, an 8-foot-wide by 130-foot long strip of cord-grass will be planted along the opposite side of the basin to improve local water quality. Articulated block mats will be placed along each side of the entrance to this basin to protect the adjacent wetland benches from erosion.

3. All dredged material from the Spanish Grant Canal and boat basin will be placed on the applicant's upland property at a newly designated 32,114-square-foot dredged material placement area.

4. Portions of a small inland pond will be filled and a new pond/wetland area will be created in another 22,000-square-foot open area within the project site to improve the prospects of wildlife use.

5. The proposed piers into Mensell Bayou will vary from 225 to 235 feet in length, have a 6-foot walkway, and have a 48-foot-wide by 12-foot-long T-head.

6. The revised subdivision plat has resulted in a roadway being built along the northern boundary of the development. This portion of the project will result in additional fill being placed into 1.04 acres of brackish marsh (regulated under Section 404 of the Clean Water Act).

7. In addition to the mitigation authorized with the original permit, the applicant proposes to compensate for the 0.80-acre tract of land taken during the widening of Camino Real Road by setting aside an additional 140-foot by 250-foot area (0.80 acre) of uplands and wetlands located south of and adjoining to the original mitigation tract. This tract fronts Stewart Road and adjoins the existing estuary. To offset the additional filling of wetlands for the roadway development along the northern border of the project area, the applicant proposes to create 2.75 acres of brackish wetland from uplands located along the southern boundary of the project area, adjacent to the existing estuary. Finally, a small brackish pond that exists on the property will be relocated to a location more suitable for wildlife usage.

8. Drainage along portions of lots not facing canals, as well as portions of lots facing roadways, will be into roadside ditches and eventually to five proposed detention ponds that will be excavated from uplands in the subdivision.

CCC Project No.: 07-0129-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-388 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on En-

vironmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Louis Lupinacci; Location: The project is located in Caney Creek, at 155 Seagull Drive, in Sargent, Matagorda County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Sargent, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 242837; Northing: 3185486. Project Description: The applicant proposes to construct a 50-linear-foot bulkhead tied into existing bulkheads on adjoining properties and to place fill within approximately 866 square feet of intertidal estuarine wetlands for the purpose of halting the recently accelerated erosion rate and to restore property. No compensatory mitigation plan has been submitted. CCC Project No.: 07-0131-F1; Type of Application: U.S.A.C.E. permit application #24428 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200700953

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council

Filed: March 12, 2007



Notice of Texas Coastal Coordination Council's Submittal of Program Changes to the National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management and Request for Public Comment

The Coastal Coordination Council (Council) is submitting its Coastal Management Program (CMP) changes to the Office of Ocean and Coastal Resource Management (OCRM) in the National Oceanic and Atmospheric Administration (NOAA) to obtain NOAA's approval. The Coastal Zone Management Act requires that the Council notify OCRM of any proposed change to Texas' approved CMP (16 U.S.C. §1455(e)(1)). This program change package identifies and summarizes amendments to the state statutes subject to the CMP since its approval by NOAA in December 1996. This package includes amendments to affected statutes adopted by the Texas Legislature through May 2005.

The Council considers these amendments to be routine program changes, and has requested the OCRM's concurrence in that determination. A routine program change is the further detailing of a state CMP that does not result in a substantial change to one or more of the following five program areas listed in 15 CFR §923.80(d): uses subject to management; special management areas; boundaries; authorities and organization; and coordination, public involvement and the national interest.

The Council solicits public comment regarding whether the program changes constitute routine program changes. Comments may be submitted to the OCRM within three weeks of the date of publication of this notice in the *Texas Register*. Please address comments to Ms.

Carrie Hall, Coastal Program Specialist, National Oceanic and Atmospheric Administration, Office of Ocean and Coastal Resource Management, 1305 East-West Hwy., Silver Spring, MD 20910-3278, carrie.hall@noaa.gov.

The program change package and the FEIS, as well as information concerning the Council and its duties, may be found on the Texas General Land Office website at <http://www.glo.state.tx.us/coastal/cc.html>. To receive a copy of the program change package, please send a written request to Ms. Deborah Cantu, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas, 78711-2873, deborah.cantu@glo.state.tx.us, facsimile (512) 463-6311.

TRD-200700994

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

Coastal Coordination Council

Filed: March 13, 2007

Comptroller of Public Accounts

Amended Notice of Request for Proposals

Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter A, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP 178b) from qualified, independent law firms to serve as Bond Counsel to the Comptroller. The Comptroller desires to obtain the services of Bond Counsel in connection with a variety of issues related to the issuance, sale, and delivery of Tax and Revenue Anticipation Notes, including Commercial Paper Notes (Notes) as well as assisting in handling all disclosure issues relating to the Notes. The successful respondent will be expected to begin performance of the contract on or about May 1, 2007.

Contact: Parties interested in submitting a proposal should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., RM G-24, Austin, Texas 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on March 9, 2007, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Electronic State Business Daily after Friday, March 9, 2007, 2:00 p.m. (CZT).

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, March 23, 2007. Prospective respondents are encouraged to fax or e-mail non-mandatory Letters of Intent and Questions to (512) 475-0973 or contracts@cpa.state.tx.us to ensure timely receipt. The Letter of Intent must be addressed to Thomas H. Hill, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or about Friday, March 30, 2007, the Comptroller expects to post responses to questions as a revision to the Electronic State Business Daily notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Friday, April 13, 2007. Proposals received in ROOM G-24 after this time and date will not be con-

sidered regardless of the reason for the late delivery and receipt. Respondents are encouraged to and solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP.

The Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. The Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - March 9, 2007, 2:00 p.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - March 23, 2007, 2:00 p.m. CZT; Official Responses to Questions posted - March 30, 2007, or as soon thereafter as practical; Proposals Due - April 13, 2007, 2:00 p.m. CZT; Contract Execution - May 1, 2007, or as soon thereafter as practical; and Commencement of Project Activities - May 1, 2007.

TRD-200700946

Pamela G. Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: March 12, 2007

Amended Notice of Request for Proposals

Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter B, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP #178a) from qualified, independent firms to serve as Financial Advisor to the Comptroller. The Comptroller desires to obtain the services of a Financial Advisor related to the document preparation, issuance, sale, and delivery of Tax and Revenue Anticipation Notes, including Commercial Paper Notes (Notes) as well as assistance in handling of disclosure issues relating to the Notes. The successful respondent will be expected to begin performance of the contract on or about May 1, 2007.

Contact: Parties interested in submitting a proposal should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., RM G-24, Austin, Texas 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on March 9, 2007, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Electronic State Business Daily after Friday, March 9, 2007, 2:00 p.m. (CZT).

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, March 23, 2007. Prospective respondents are encouraged to fax or e-mail non-mandatory Letters of Intent and Questions to (512) 475-0973 or contracts@cpa.state.tx.us to ensure timely receipt. The Letter of Intent must be addressed to Thomas H. Hill, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or about Friday, March 30, 2007, the Comptroller expects to post responses to questions as a

revision to the Electronic State Business Daily notice on the issuance of this RFP.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Friday, April 13, 2007. Proposals received in ROOM G-24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to verify and are solely responsible for verifying timely receipt of proposals in that office (ROOM G-24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP.

The Comptroller reserves the right, in its sole discretion, to accept or reject any or all proposals submitted. The Comptroller is not obligated to award or execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - March 9, 2007, 2:00 p.m. CZT; Non-Mandatory Letter of Intent to propose and Questions Due - March 23, 2007, 2:00 p.m. CZT; Official Responses to Questions posted - March 30, 2007, or as soon thereafter as practical; Proposals Due - April 13, 2007, 2:00 p.m. CZT, Contract Execution - May 1, 2007, or as soon thereafter as practical; and Commencement of Project Activities - May 1, 2007.

TRD-200700947

Pamela G. Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: March 12, 2007

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/19/07 - 03/25/07 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 03/19/07 - 03/25/07 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200700969

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: March 13, 2007

Commission on State Emergency Communications

Public Notice of Workshop Regarding Collecting and Remitting the Wireless 9-1-1 Emergency Service Fee with Respect to Prepaid Wireless Services

The staff of the Commission on State Emergency Communications ("CSEC") will hold a workshop regarding the collection and remit-

tance of the wireless 9-1-1 emergency service fee ("9-1-1 Fee") imposed on wireless telecommunications connections used by prepaid wireless subscribers. The workshop will be held on **Thursday, April 5, 2007, from 10:00 p.m. to 4:00 p.m., Room 100, Hobby Building, 333 Guadalupe Street, Austin, Texas 78701**. All interested persons are invited to attend.

Health and Safety Code §771.0711 obligates CSEC to impose upon each wireless telecommunications connection ("WTC") the 9-1-1 Fee. A wireless service provider is required to collect the 9-1-1 Fee in an amount equal to 50 cents per month for each WTC from its subscribers and remit the collections to the Texas Comptroller of Public Accounts. For purposes of the workshop, a person using a WTC is deemed a subscriber. The workshop, therefore, is limited to a discussion of issues involving the collection and remittance of the 9-1-1 Fee.

CSEC staff is seeking input from interested persons to determine whether a rulemaking regarding the collection of the 9-1-1 Fee from prepaid wireless service subscribers is appropriate. This notice is not a formal notice of proposed rulemaking; however, the workshop may lead to the drafting of a rule for publication and comment.

Prior to the workshop, CSEC staff requests interested persons submit comments on the following:

1. Health and Safety Code §771.071(b) requires that the 9-1-1 Fee be collected in an "amount equal to 50 cents." Please describe what could be considered an "amount equal to 50 cents."
2. Please define the term "prepaid" in the context of wireless service. Does the definition include charges a subscriber with a defined-term contract with a wireless services provider is charged for the following month's basic service?
3. Using your definition of "prepaid," please describe the ways in which prepaid wireless services may be purchased by subscribers.
4. Please describe the means by which the 9-1-1 Fee is collected from subscribers of prepaid wireless services.
5. Do the means by which "prepaid" wireless services are purchased impact the ability of wireless service providers to collect the 9-1-1 Fee? If so, please specify the means of purchase and describe with particularity the difficulties.
6. For those means of purchase described in response to item 3, please propose a method(s) of collecting and remitting the 9-1-1 Fee.
7. Is a reseller of wireless services, a wireless services provider as defined in Health and Safety Code §771.001(12)? If not, please explain.
8. Are there any circumstances in which a reseller of wireless service could be deemed a subscriber for purposes of Health and Safety Code §771.071(b)? Please explain.
9. Are there any circumstances in which a retailer of WTCs could be deemed a subscriber for purposes of Health and Safety Code §771.071(b)? Please explain.
10. Are there any circumstances where the obligation to collect and remit the 9-1-1 Fee could be imposed upon a wireless service provider whose wireless network is used by the subscribers of a reseller of wireless services? Please explain.
11. Please describe the benefits and burdens of a rule authorizing prepaid wireless service providers to use a date certain each month to determine the number of "active" prepaid WTCs they have with Texas NPA-NXXs customers; and to deduct from such active WTCs an amount equal to 50 cents. (Note: As described, the rule is limited to those instances where the collection of 50 cents from subscribers each month is not feasible.)

12. Please describe the benefits and burdens of a rule incorporating the 9-1-1 Fee into the purchase price(s) for prepaid wireless services.

Comments may be filed electronically by submitting them to info@csec.state.tx.us or by mailing them to CSEC, c/o Hazel Van Cleave, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942. Please include in the subject line "Comments for Prepaid Wireless Workshop." The deadline for submitting comments is April 3, 2007.

An audio-conference bridge for the workshop will be made available, though participants are encouraged to attend in person. The bridge is limited to 50 lines and can be accessed by dialing 1-888-448-7101, and when prompted, 966451#. All comments, updates, and additional workshop information may be found at http://www.911.state.tx.us/browse.php/telco_remitt/.

Persons planning on participating in the workshop, please register by contacting Hazel Van Cleave at (512) 305-6928 or hazel.van-cleave@csec.state.tx.us.

Questions concerning the workshop or this notice should be referred to Patrick Tyler, CSEC General Counsel, at (512) 305-6915. Hearing and speech-impaired individuals with a telecommunications device for the deaf may contact CSEC at (512) 305-6925.

TRD-200701019

Paul Mallett

Executive Director

Commission on State Emergency Communications

Filed: March 14, 2007



Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that, before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 23, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 23, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: City of Arlington; DOCKET NUMBER: 2006-0720-WQ-E; IDENTIFIER: RN104950134; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: wastewater collection system line; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater; PENALTY: \$11,250; Supplemental Environmental Project (SEP) offset amount of \$11,250 applied to 1st time sewer service to a low income household which is currently connected to a failing on-site septic system and to a one day city-wide household hazardous waste and pharmaceuticals collection event; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Chet N Inc. dba Lakeside Cleaners; DOCKET NUMBER: 2006-0854-DCL-E; IDENTIFIER: RN104984950 and RN104988191; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop stations; RULE VIOLATED: 30 Texas Administrative Code (TAC) §337.10(a) and Texas Health & Safety Code (THSC), §374.102, by failing to complete and submit the required registration form; PENALTY: \$2,370; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Community Water Company dba Rolling Hills Water System; DOCKET NUMBER: 2006-2237-PWS-E; IDENTIFIER: RN102690310; LOCATION: Hunt County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(b)(4), by failing to maintain a free chlorine residual of 0.2 milligrams per liter (mg/L) or 0.5 mg/L of chloramine; and 30 TAC §290.46(m)(4), by failing to maintain all distribution system lines in a watertight condition; PENALTY: \$2,640; ENFORCEMENT COORDINATOR: Andrea Linsion-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2006-2030-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 5920A, Special Condition 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$10,000; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Crown Beverage Packaging Inc.; DOCKET NUMBER: 2006-1716-AIR-E; IDENTIFIER: RN100218072; LOCATION: Sugar Land, Fort Bend County, Texas; TYPE OF FACILITY: aluminum can manufacturing; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(B) and (C) and THSC, §382.085(b), by failing to submit the semi-annual deviation report; 30 TAC §101.20(1) and §122.143(4), Federal Operating Permit (FOP) O-01034, Special Condition Number 1, 40 Code of Federal Regulations §60.495(b), and THSC, §382.085(b), by failing to submit semi-annual reports; and 30 TAC §122.143(4) and §122.145(2)(A), FOP O-01034, Special Condition Number 1, and THSC, §382.085(b), by failing to report all emissions events on a deviation report; PENALTY: \$7,920; ENFORCEMENT COORDINATOR: Sherronda Martin, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2006-0736-AIR-E; IDENTIFIER: RN102212925; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §116.715(a), Flexible Air Permit Number 3452, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent an avoidable emissions event; and 30 TAC §101.201(a)(1)

and THSC, §382.085(b), by failing to submit the initial notification; PENALTY: \$50,147; Supplemental Environmental Project (SEP) offset amount of \$25,073 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Hagg, Inc. dba Speedy Mart; DOCKET NUMBER: 2006-1868-PST-E; IDENTIFIER: RN101832533; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all underground storage tanks (USTs); and 30 TAC §334.50(b)(1)(A), (b)(2), (b)(2)(A)(i)(III), and (d)(1)(B)(ii), and the Code, §26.3475(a) and (c), by failing to provide proper release detection for the UST system; PENALTY: \$6,600; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Insteel Wire Products Company; DOCKET NUMBER: 2006-2058-WQ-E; IDENTIFIER: RN103179339; LOCATION: Dayton, Liberty County, Texas; TYPE OF FACILITY: wire mesh manufacturing; RULE VIOLATED: 30 TAC §281.25(a)(4) and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR050000, Part III, Section A.5.(f), by failing to conduct annual employee training; 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR050000, Part III.D.1., by failing to obtain a monitoring exclusion or conduct annual hazardous metals monitoring; 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR050000, Parts III.A.5.(g) and (h), by failing to conduct periodic inspections once per quarter and to perform quarterly visual monitoring of the storm water discharge; 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR050000, Part III.A.7., by failing to conduct an annual comprehensive site compliance evaluation; and 30 TAC §281.25(a)(4) and TPDES General Permit Number TXR050000, Part III.A.5., by failing to implement pollution prevention practices; PENALTY: \$10,400; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: City of Kaufman; DOCKET NUMBER: 2007-0022-PWS-E; IDENTIFIER: RN101392728; LOCATION: Kaufman, Kaufman County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(c)(5)(B), by failing to conduct and record daily chlorine residual tests; 30 TAC §290.43(e), by failing to maintain an intruder resistant fence around the elevated storage tank; 30 TAC §290.42(j), by failing to demonstrate that the calcium hypochlorite used in the disinfection process is American National Standards Institute/National Sanitation Foundation approved; 30 TAC §290.46(m)(1) and (4), by failing to inspect the one ground storage tank and two elevated storage tanks and by failing to ensure all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances are maintained in a watertight condition; 30 TAC §290.44(h)(4), by failing to test backflow prevention assemblies; and 30 TAC §290.43(c)(4), by failing to provide an adequate water level indicator on the elevated storage tanks; PENALTY: \$6,380; ENFORCEMENT COORDINATOR: Christopher Miller, (512) 239-6580; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Millennium Petrochemicals Inc.; DOCKET NUMBER: 2006-1988-AIR-E; IDENTIFIER: RN100224450; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 4571, Special Condition Number 5, and THSC, §382.085(b),

by failing to prevent unauthorized emissions; PENALTY: \$10,000; Supplemental Environmental Project (SEP) offset amount of \$5,000 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Port of Houston Authority dba APM Terminals; DOCKET NUMBER: 2007-0167-PST-E; IDENTIFIER: RN101742237; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: \$875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Rushing Paving Company, Ltd.; DOCKET NUMBER: 2006-2229-AIR-E; IDENTIFIER: RN102165974; LOCATION: Sherman, Grayson County, Texas; TYPE OF FACILITY: asphalt concrete plant; RULE VIOLATED: 30 TAC §111.111(a)(1)(B) and §116.115(b), Permit Number 18602, General Condition 9, and THSC, §382.085(b), by failing to properly maintain emission control equipment; PENALTY: \$2,740; ENFORCEMENT COORDINATOR: Jessica Rhodes, (512) 239-2879; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Shelbyville Independent School District; DOCKET NUMBER: 2006-1980-MWD-E; IDENTIFIER: RN101527224; LOCATION: Shelby County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §319.11(d), by failing to install flow measurement equipment; 30 TAC §305.125(1) and TPDES Permit Number WQ0013370001, Monitoring and Reporting Requirements Number 7.c., by failing to notify the TCEQ of effluent violations that deviated from the permitted limitations by more than 40%; 30 TAC §319.7(c) and TPDES Permit Number WQ0013370001, Monitoring and Reporting Requirements Number 3.b., by failing to maintain all records and information resulting from the required monitoring activities; and 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0013370001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of treatment and control are properly operated and maintained; PENALTY: \$3,927; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Union Water Supply Corporation; DOCKET NUMBER: 2007-0031-MWD-E; IDENTIFIER: RN102915501; LOCATION: Starr County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0014313001, Effluent Limitations and Monitoring Requirements Numbers 1, 2, 3, and 6, and the Code, §26.121(a), by failing to comply with permitted limits; PENALTY: \$8,550; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(15) COMPANY: Wingate Gin Corporation dba Big Spring Gin; DOCKET NUMBER: 2007-0079-AIR-E; IDENTIFIER: RN101973618; LOCATION: Big Spring, Howard County, Texas; TYPE OF FACILITY: cotton ginning plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §116.116(b)(1)(C), New Source Review Permit Number 29009, Special Condition 1 and General Condition 8, and THSC, §382.085(b), by failing to obtain a permit amendment prior to increasing particulate matter emissions; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: Trina

Grieco, (210) 490-3096; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

TRD-200700977

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 13, 2007

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Correction of Error

The Texas Commission on Environmental Quality (TCEQ) proposed an amendment to 30 TAC §80.108, concerning Contested Case Hearings, in the February 23, 2007, issue of the *Texas Register* (32 TexReg 711). Due to errors in the submitted preamble text, TCEQ makes the following corrections.

On page 711 the first paragraph immediately after the subheading, "BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE" is stricken. This paragraph should read as follows.

"The proposed amendment will provide the commission with the express authority to direct the executive director to participate as a party in contested case hearings regarding certain permit applications. The amendment would add subsection (m) which provides an option for the commission to direct the executive director to participate as a party in the types of hearings listed in subsections (a) and (c). Subsection (a) provides that the executive director shall not participate as a party in contested case hearings regarding permit applications for seven types of applications. Subsection (c) applies to matters not included in subsections (a) or (b) and provides that the executive director shall consider certain criteria in determining whether to participate as a party. This change will afford the commission the opportunity to benefit from the executive director's specialized knowledge by his participation in selected contested case hearings. The types of applications in subsection (a) were included in the initial rulemaking because they were identified as less complex or not having unique conditions; however, experience has shown that technical and policy issues in these types of cases may warrant participation by the executive director as a party. It will also ensure that the administrative record is complete."

On page 711, the second paragraph after the subheading, "FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT" contains errors. The first sentence of the paragraph should read as follows.

"The proposed rule would add subsection (m) which would provide an option for the commission to direct the executive director to participate as a party in the types of hearings listed in subsections (a) and (c)."

On page 712, first column, first paragraph, the following language was omitted, and should be inserted before the last sentence.

"In addition, experience has shown that this knowledge may be helpful and warranted in contested case hearings where one or more of the issues to be presented in the hearing are new, unique, or complex, including consideration of whether an issue relates to more than one medium, and whether it is likely that construction of prior agency policy or practice will be involved; it is likely that the decision on any of the issues to be presented in the hearing will have significant implications for other agency actions or policies; it is likely that changes to proposed permit conditions could adversely affect human health or the environment; or any issue to be considered is likely to affect federal program approval or authorization. Further, participation may be warranted when the commission determines there is a significant disparity in the experience and resources of the parties, and in cases in which the draft permit contains

any provision that has been included by the executive director to address an applicant's compliance history."

On page 712, under the subheading, "PUBLIC BENEFITS AND COSTS," text is now deleted from the first paragraph. It should read as follows.

"Ms. Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be the benefit of having more complete information being presented to SOAH and the commission for decisions regarding contested cases."

TRD-200700961

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 23, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 23, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: A&B, Inc. dba The Corner Stop 3; DOCKET NUMBER: 2006-0306-PST-E; TCEQ ID NUMBER: RN102438389; LOCATION: 1536 Pulliam Street, San Angelo, Tom Green County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(2)(C), and Texas Water Code (TWC), §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly; 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to monitor Underground Storage Tanks (USTs) for releases at a frequency of at least once per month (not to

exceed 35 days between each monitoring) and by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.8(c)(5)(B)(ii), by failing to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date of the delivery certificate. PENALTY: \$6,240; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(2) COMPANY: Al-Tahir U.S.A., Inc. dba Main Street Shell; DOCKET NUMBER: 2005-0292-PST-E; TCEQ ID NUMBER: RN101821742; LOCATION: 2220 Main Street, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: \$3,210; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Alther Tyson dba AFP Tires; DOCKET NUMBER: 2005-0464-MSW-E; TCEQ ID NUMBER: RN1042933857; LOCATION: 3475 College Street, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: tire shop and scrap tire storage facility; RULES VIOLATED: 30 TAC §328.56(a)(1), and (d)(2), and §328.60(a), by failing to obtain a registration as a scrap tire generator and storage site while storing in excess of 500 used or scrap tires; and 30 TAC §328.56(d)(4), by failing to monitor vectors and utilize vector control measures at least once every two weeks for the storage of over 500 tires outside; PENALTY: \$6,300; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-0972; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Carol D. Shumaker dba Annex Cleaners 2; DOCKET NUMBER: 2006-1272-DCL-E; TCEQ ID NUMBER: RN102913936; LOCATION: 1620 Martin Luther King Jr. Boulevard, Dallas, Dallas County, Texas; TYPE OF FACILITY: retail commercial establishment/dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a) and Texas Health and Safety Code (THSC), §374.102, by failing to complete and submit the required registration form to TCEQ for a dry cleaning and/or drop station facility; PENALTY: \$1,185; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Lee Landers dba Acorn Mobile Home Park; DOCKET NUMBER: 2006-0246-PWS-E; TCEQ ID NUMBER: RN101266922; LOCATION: 10100 Jacksboro Highway, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.109(f)(3), and §290.122(b)(2)(A), and THSC, §341.0315(c), by failing and exceeding the Maximum Contaminant Level for total coliform in June and July 2005, and by failing to provide public notice of those total coliform exceedances; 30 TAC §290.109(c)(3)(A)(ii), and §290.122(c)(2)(A), by failing to collect all required repeat samples within 24 hours of being notified of a total coliform-positive result on a routine sample from June 2005, and by failing to provide public notice of the failure to collect all required repeat samples within 24 hours of notification of the total coliform-pos-

itive result; 30 TAC §290.109(c)(2)(F), and §290.122(c)(2)(A), by failing to collect at least five routine bacteriological samples in August 2005 following total coliform-positive results the preceding month, and by failing to provide public notice of the failure to collect the five routine bacteriological samples; 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A), and THSC, §341.033(d), by failing to conduct routine bacteriological monitoring of the public water supply in October and November 2005, and by failing to provide public notice of the failure to conduct the routine bacteriological monitoring; and 30 TAC §290.51(a)(3), and TWC, §5.702, by failing to pay all annual and late Public Health Services fees for TCEQ Financial Administration Account No. 9220146 for Fiscal Years 2000 through 2006; PENALTY: \$1,950; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200700981

Mary Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 13, 2007



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 23, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 23, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: City of Crowell; DOCKET NUMBER: 2006-1101-PWS-E; TCEQ ID NUMBER: RN101383636; LOCATION: 101 East California Street, Crowell, Foard County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(f)(3), and Texas Health and Safety Code (THSC), §341.0315(c), by exceeding the maximum contaminant level (MCL)

for total coliform bacteria in October 2005; 30 TAC §290.109(f)(1)(A), and THSC, §341.0315(c); by exceeding the acute maximum contaminant level (AMCL) for fecal coliform and *Escherichia coli* bacteria in November 2005; and 30 TAC §290.109(f)(3), and THSC, §341.0315(c), by exceeding the MCL for total coliform bacteria in July 2006; PENALTY: \$1,370; STAFF ATTORNEY: Dinniah Chahin, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: City of Jacinto City; DOCKET NUMBER: 2005-1937-MWD-E; TCEQ ID NUMBERS: RN101919884; LOCATION: southeast of the Market Street Bridge over Hunting Bayou, Jacinto City, Harris County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.125(1); Texas Pollutant Discharge Elimination System Permit No. 10195001, Effluent Limitations and Monitoring Requirements No. 1; and Texas Water Code (TWC), §26.121(a), by failing to maintain compliance with the permitted effluent limitations during February, March, April, and May, 2005; PENALTY: \$6,823; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Daegu Corp. dba Lebon Cleaners; DOCKET NUMBER: 2006-1554-DCL-E; TCEQ ID NUMBER: RN102162468; LOCATION: 3308 Preston Road, Suite 320, Plano, Collin County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULES VIOLATED: 30 TAC §337.11(e), and THSC, §374.102, by failing to renew the Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station; PENALTY: \$1,185; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Danny Crump dba Southend Grocery; DOCKET NUMBER: 2005-0784-PST-E; TCEQ ID NUMBER: RN102026465; LOCATION: 1101 S. Jefferson Avenue, Mt. Pleasant, Titus County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance, for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum storage tanks; PENALTY: \$1,200; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: Diamond Shamrock Refining Company, L.P.; DOCKET NUMBER: 2006-1774-AIR-E; TCEQ ID NUMBER: RN100210517; LOCATION: 6701 FM 119, Sunray, Moore County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.20(3), and §116.715(a); Flexible New Source Review (NSR) Permit No. 9708/PSD-TX-861M2, Special Condition No. 1; and THSC, §382.085(b), by failing to comply with permitted emissions limits for an emissions event that occurred on May 8, 2006 through May 10, 2006; 30 TAC §101.20(3) and §116.715(a); Flexible NSR Permit No. 9708/PSD-TX-861M2, Special Condition No. 1; and THSC, §382.085(b), by failing to comply with permitted emissions limits for an emissions event that occurred on May 9, 2006; and 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit a final report within two weeks after the end of an emissions event; PENALTY: \$15,912; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Amarillo

Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: Joe K. Hopper; DOCKET NUMBER: 2006-1065-LII-E; TCEQ ID NUMBER: RN104611603; LOCATION: 5512 8th Place, Lubbock, Lubbock County, Texas; TYPE OF FACILITY: landscape irrigation business, Ace Sprinkler Systems; RULES VIOLATED: 30 TAC §30.5(b) and §344.58(b), TWC, §37.003, and Texas Occupational Code (TOC), §1903.251, by failing to have a valid irrigator license but was representing himself to the public as a holder of a license or registration; PENALTY: \$2,500; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3520, (806) 796-7092.

(7) COMPANY: Jorge Tangarife dba Diamond Xpress Cleaners; DOCKET NUMBER: 2006-1725-DCL-E; TCEQ ID NUMBER: RN104490131; LOCATION: 14607 Hillcroft Street, Suite C, Missouri City, Fort Bend County, Texas; TYPE OF FACILITY: dry cleaning facility; RULES VIOLATED: 30 TAC §337.10(a), and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for the Facility; PENALTY: \$270; STAFF ATTORNEY: Ben Thompson, Litigation Division, MC 175, (512) 239-1297; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: Lynn Turney; DOCKET NUMBER: 2006-0121-MLM-E; TCEQ ID NUMBER: RN104812334; LOCATION: 3102 West Highway 377, Grandbury, Hood County, Texas; TYPE OF FACILITY: waste disposal site; RULES VIOLATED: 30 TAC §330.5(a), and §335.2(a), by failing to prevent the disposal of municipal solid waste and industrial solid waste at the Site, and 30 TAC §111.201, and THSC, §382.085(b), by failing to prevent any outdoor burning; PENALTY: \$3,000; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Manir Bata dba Addison Circle Cleaners II; DOCKET NUMBER: 2006-1298-DCL-E; TCEQ ID NUMBER: RN105000541; LOCATION: 15655 Spectrum Drive, Addison, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a), and THSC, §374.102, by failing to complete and submit the required documentation form to TCEQ for a dry cleaning drop station; PENALTY: \$1,185; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Quick Shop #2, Inc. dba I 10 Fuelmart Etc; DOCKET NUMBER: 2005-1559-PST-E; TCEQ ID NUMBER: RN101875862; LOCATION: 800 Freeway Boulevard, Rose City, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(1), and THSC, §382.085(b), by failing to maintain a copy of the California Air Resources Board (CARB) Executive Order(s) for the Stage II vapor recovery system; 30 TAC §115.246(5), and THSC, §382.085(b), by failing to maintain Stage II vapor recovery annual and triennial tests; 30 TAC §115.246(6) and THSC, §382.085(b), by failing to maintain daily/monthly inspection logs; 30 TAC §115.248(1), and THSC, §382.085(b), by failing to ensure that one representative receives training and instruction in the operation and maintenance of the Stage II vapor recovery system; 30 TAC §334.50(b)(1)(A), and TWC, §26.3475(c)(1), by failing to ensure that all tanks are monitored for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for

the Underground Storage Tank (UST) system; PENALTY: \$12,000; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: Silwad, Inc. dba Circle M Food Store; DOCKET NUMBER: 2004-1405-PST-E; TCEQ ID NUMBER: RN102452463; LOCATION: 1025 South 18th Street, Waco, McLennan County, Texas; TYPE OF FACILITY: store with retail sales of gasoline; RULES VIOLATED: 30 TAC §§334.50(a)(1)(A), 334.50(b)(2) and 334.50(b)(2)(A)(i)(III) and TWC, §26.3475(a) and (c)(1), by failing to have a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping and other ancillary equipment. Also, by failing to perform a piping tightness test for the pressurized line at least once per year for the UST system and by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to have corrosion protection on the UST system; 30 TAC §334.48(c), by failing to conduct inventory control on all USTs; 30 TAC §334.8(c)(5)(C), by failing to number all tanks according to the registration self-certification form; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking correction action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$13,375; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2006-1067-AIR-E; TCEQ ID NUMBER: RN100238385; LOCATION: 1301 Loop 197 South, Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refinery; RULES VIOLATED: 30 TAC §101.20(3) and §116.715(a); Flexible Permit No. 39142/PSD-TX-822M2, Special Condition No. 1; and THSC, §382.085(b), by failing to comply with permitted emissions limits during an emissions event which occurred on February 15, 2006. Since this emissions event could have been avoided by good operation practices, it failed to meet the demonstrations for an affirmative defense; 30 TAC §101.20(3) and §116.715(a); Flexible Permit No. 39142/PSD-TX-822M2, Special Condition No. 1; and THSC, §382.085(b), by failing to comply with permitted emissions limits during an emissions event which occurred on March 11, 2006. Since this emissions event could have been avoided by good operation practices, it failed to meet the demonstrations for an affirmative defense; 30 TAC §101.20(3) and §116.715(a); Flexible Permit No. 39142/PSD-TX-822M2, Special Condition No. 1; and THSC, §382.085(b), by failing to comply with permitted emissions limits during an emissions event which occurred on March 22, 2006. Since this emissions event could have been avoided by good operation practices, it failed to meet the demonstrations for an affirmative defense; 30 TAC §101.20(3), and §116.715(a); Flexible Permit No. 39142/PSD-TX-822M2, Special Condition No. 1; and THSC, §382.085(b), by failing to comply with permitted emissions limits during an emissions event which occurred on February 12, 2006. Since this emissions event could have been avoided by good operation practices, it failed to meet the demonstrations for an affirmative defense; 30 TAC §101.20(3) and §116.715(a); Flexible Permit No. 39142/PSD-TX-822M2, Special Condition No. 1; and THSC, §382.085(b), by failing to comply with permitted emissions limits during an emissions event which occurred on March 30, 2006. Since this emissions event could have been avoided by good operation practices, it failed to meet the demonstration for an affirmative defense; 30 TAC §101.20(3) and §116.715(a); Flexible Permit

No. 39142/PSD-TX-822M2, Special Condition No. 1; and THSC, §382.085(b), by failing to comply with permitted emissions limits during an emissions event which occurred on May 19, 2006. Since this emissions event could have been avoided by good operation practices, it failed to meet the demonstrations for an affirmative defense; 30 TAC §101.201(3) and THSC, §382.085(b), by failing to submit a copy of the final record for a reportable emissions event which occurred on March 11, 2006 no later than two weeks after the end of the emissions event; 30 TAC §101.201(c) and THSC, §382.085(b), by failing to submit a copy of the final record for a reportable emissions event which occurred on February 12, 2006 no later than two weeks after the end of the emissions event; 30 TAC §101.201(b)(1)(H) and THSC, §382.085(b), by failing to provide the preconstruction authorization number on the final report for a reportable emissions event (Incident No. 76064) which occurred on May 19, 2006; 30 TAC §112.31 and §116.715(a); Flexible Permit No. 39142/PSD-TX-822M2, Special Condition No. 1; and THSC, §382.085(b), by failing to prevent unauthorized emissions that exceeded the fence line hydrogen sulfide (H₂S) concentration limit during an emission event that started on October 4, 2004; 30 TAC §116.715(a); Flexible Permit No. 39142/PSD-TX-822M2, Special Condition No. 1; and THSC, §382.085(b), by failing to comply with permitted emissions limits during an emissions event which occurred on July 9, 2006. Since this emissions event was avoidable, it failed to meet the demonstrations for an affirmative defense; and 30 TAC §116.715(c); Flexible Permit No. 39142/PSD-TX-822M2, Special Condition No. 1; and THSC, §382.085(b), by failing to comply with permitted emissions limits during an emissions event which occurred on July 18, 2006. Since this emissions event was avoidable, it failed to meet the demonstrations for an affirmative defense; PENALTY: \$119,149; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Westlake JV, Inc. dba Renaissance Builders; DOCKET NUMBER: 2006-0511-WQ-E; TCEQ ID NUMBER: RN104921804; LOCATION: 4900, 4901, and 4924 Rockrimmon Court, Colleyville, Tarrant County, Texas; TYPE OF FACILITY: home construction sites; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$5,000; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Zulfiqar Noorani dba County Cleaners; DOCKET NUMBER: 2006-1201-DCL-E; TCEQ ID NUMBER: RN104989959; LOCATION: 9641A Cypresswood Drive, Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULES VIOLATED: 30 TAC §337.10(a), and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning drop station facility; PENALTY: \$1,185; STAFF ATTORNEY: Mary Hammer, Litigation Division MC 175, (512) 239-2496; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200700980

Mary Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 13, 2007

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Notice of Opportunity to Comment on Shut Down/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475, authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, and the proposed technical requirements necessary to bring the entity back into compliance and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 23, 2007**. The commission will consider any written comments received; and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DOs is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. April 23, 2007**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: SSMA Corporation, Inc. dba Stop N Drive 30; DOCKET NUMBER: 2004-1281-PST-E; TCEQ ID NUMBER: RN101818201; LOCATION: 716 Magnolia Avenue, Port Neches, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72(2), by failing to report to the Agency, within 24 hours, unusual operating conditions observed such as unexplained presence of water in the diesel tank; 30 TAC §334.74, by failing to investigate a suspected release; 30 TAC §334.50(b)(1)(A), and Texas Water Code (TWC), §26.3475(c)(1), by failing to provide proper release detection for underground storage tank (UST) systems; 30 TAC §334.50(b)(2), and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the diesel underground storage tank; 30 TAC §334.50(d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to reconcile inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds

the sum of 1.0 percent of the total substance flowthrough for the month plus 130 gallons; 30 TAC §334.50(d)(1)(B)(iii)(I), and TWC, §26.3475(c)(1), by failing to conduct inventory volume measurements for regulated substance inputs, withdrawals, and amount still remaining in the tank each operating day; 30 TAC §334.8(c)(5)(A)(iii), by failing to ensure a valid delivery certificate was posted at the Station and was visible at all times; 30 TAC §115.244(3), and §115.246(7), and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain on site a record of the Stage II monthly inspection; 30 TAC §115.246(1), and THSC, §382.085(b), by failing to maintain a copy of the applicable California Air Resources Board (CARB) Executive Order; 30 TAC §115.246(4) and (7), and THSC, §382.085(b), by failing to maintain documentation of attendance and completion of Stage II training of Station employees; 30 TAC §115.246(6) and (7), and THSC, §382.085(b), by failing to maintain a record of the Stage II daily inspections; 30 TAC §115.245(2), and THSC, §382.085(b), by failing to conduct an annual Stage II test within the previous 12 months; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to conduct a triennial Stage II test within the previous 36 months; 30 TAC §115.242(3)(J), and THSC, §382.085(b), by failing to repair or replace damaged or inoperative Stage I dry break; 30 TAC §334.51(b)(2)(C), and TWC, §26.3475(c)(2), by failing to install overfill prevention equipment; 30 TAC §334.8(c)(4)(B), by failing to ensure that the UST registration and self-certification form was fully and accurately completed, and was submitted to the agency in a timely manner; 30 TAC §334.8(c)(5)(A)(i), and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate before delivery of a regulated substance into the USTs was accepted; and 30 TAC §37.815(a) and (b), by failing to provide a properly worded insurance policy for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: \$34,650; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200700982

Mary Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: March 13, 2007



Notice of Request for Public Comment and Notice of a Public Meeting for One Total Maximum Daily Load

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment one draft Total Maximum Daily Load (TMDL) for bacteria in Guadalupe River Above Canyon Lake (Segment 1806) of the Guadalupe River Basin, located in Kerr, Kendall, and Comal Counties. The TCEQ will conduct a public meeting to receive comments on the draft TMDL. This announcement also constitutes notice that the TMDL will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies included in the state of Texas Clean Water Act, §303(d) list of impaired water bodies. A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDL for bacteria in Guadalupe River (Segment 1806). The purpose of the public meeting is to provide the public an opportunity to comment on the draft

TMDL. The commission requests comment on each of the six major components of the TMDL: problem definition, endpoint identification, source analysis, linkage between sources and receiving waters, margin of safety, and pollutant loading allocation. After the public comment period, TCEQ staff may revise the TMDL, if appropriate. The final TMDL will then be considered by the commission for adoption. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments will be made available on the TCEQ Web site referenced below. The TMDL will then be submitted to EPA Region 6 for approval. Upon approval, the TMDL will be certified as an update to the State of Texas Water Quality Management Plan.

The public comment meeting will be held on April 10, 2007, at 7:00 p.m., at the Upper Guadalupe River Authority; 125 Lehmann Drive, Suite 100; Kerrville, Texas 78028. At this meeting, individuals have the opportunity to present oral statements when called upon in order of registration. There will be no agenda or presentations given, open discussion will not occur during the meeting. However, an agency staff member will be available to discuss the matter 30 minutes prior to the meeting and will answer questions before and after all public comments have been received.

Written comments should be submitted to Kerry Niemann, TCEQ Water Programs Division, MC 203, P.O. Box 13087, Austin, TX 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., April 23, 2007, and should reference, *One Total Maximum Daily Load for Bacteria in Guadalupe River, For Segment Number 1806*. For further information regarding the draft TMDL, please contact Kerry Niemann, Water Programs Division, at (512) 239-0483 or kniemann@tceq.state.tx.us. Copies of the draft TMDL document will be available and can be obtained via the commission's Web site at: <http://www.tceq.state.tx.us/implementation/water/tmdl/tmdlcalendar.html> or by calling (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-200700976

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 13, 2007



Notice of Request for Public Comment and Notice of a Public Meeting for Three Total Maximum Daily Loads

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment three draft Total Maximum Daily Loads (TMDLs) for bacteria in Salado Creek (Segment 1910), Walzem Creek (Segment 1910A), and Upper San Antonio River (Segment 1911) of the San Antonio River Basin, located in Bexar, Wilson, and Karnes Counties. The TCEQ will conduct a public meeting to receive comments on the draft TMDLs. This announcement also constitutes notice that the TMDLs will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies included in the state of Texas Clean Water Act, §303(d) list of impaired water bodies. A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDLs for bacteria in Salado Creek (Segment 1910), Walzem Creek (Segment 1910A), and Upper San Antonio River (Segment 1911). The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDLs. The commission requests comment on each of the six major components of the TMDL: problem definition, endpoint identification, source analysis, linkage between sources and receiving waters, margin of safety, and pollutant loading allocation. After the public comment period, TCEQ staff may revise the TMDLs, if appropriate. The final TMDLs will then be considered by the commission for adoption. Upon adoption of the TMDLs by the commission, the final TMDLs and a response to all comments will be made available on the TCEQ Web site referenced below. The TMDLs will then be submitted to EPA Region 6 for approval. Upon approval, the TMDLs will be certified as updates to the State of Texas Water Quality Management Plan.

The public comment meeting will be held on April 3, 2007, at 7:00 p.m., at the San Antonio River Authority, 100 E. Guenther Street, San Antonio, Texas 78204. At this meeting individuals have the opportunity to present oral statements when called upon in order of registration. There will be no agenda or presentations given, open discussion will not occur during the meeting. However, an agency staff member will be available to discuss the matter 30 minutes prior to the meeting and will answer questions before and after all public comments have been received.

Written comments should be submitted to Kerry Niemann, TCEQ Water Programs Division, MC 203, P.O. Box 13087, Austin, TX 78711-3087 or faxed to (512) 239-1414. All comments must be received by 5:00 p.m., April 23, 2007, and should reference, *Three Total Maximum Daily Loads for Bacteria in the San Antonio Area, For Segment Numbers 1910, 1910A, and 1911*. For further information regarding the draft TMDLs, please contact Kerry Niemann, Water Programs Division, at (512) 239-0483 or kniemann@tceq.state.tx.us. Copies of the draft TMDL document will be available and can be obtained via the commission's Web site at: <http://www.tceq.state.tx.us/implementation/water/tmdl/tmdlcalendar.html> or by calling (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-200700975

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: March 13, 2007



Notice of Water Quality Applications

The following notices were issued during the period of August 1, 2007 through August 8, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

AES DEEPWATER, INC. which operates a steam electric generating facility, has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004795000, to authorize the discharge of low volume waste sources, previously monitored effluents (PMEs), and storm water at a daily average flow not to

exceed 1,000,000 gallons per day via Outfall 001, and cooling tower blowdown at a daily average flow not to exceed 432,000 gallon per day via Internal Outfall 101. The facility is located at 701 Light Company Road in Pasadena, Harris County, Texas.

AQUA DEVELOPMENT, INC. has applied for a renewal of TPDES Permit No. 14357-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility is located approximately 2.25 miles west of the Lake Conroe spillway and 1,000 feet south of State Highway 105 in Montgomery County, Texas.

AQUA UTILITIES, INC. has applied for a renewal of TPDES Permit No. WQ0011193001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located approximately 2,000 feet southeast of the intersection of Fisher and Brittmore Roads in Harris County, Texas.

AVALON WATER SUPPLY AND SEWER SERVICE CORPORATION has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0013981001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 1,100 feet west of State Highway 55 and approximately 1,900 feet south of the intersection of State Highway 34 and State Highway 55 in the community of Avalon in Ellis County, Texas.

CITY OF COLMESNEIL has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0011295001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 0.8 mile northwest of the intersection of U.S. Highway 69 and Farm-to-Market Road 256 in the northwest part of the City of Colmesneil in Tyler County, Texas.

CONROE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 12205-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located 2,000 feet northwest of the intersection of Farm-to-Market Road 1314 and Bennette Estates Road in Montgomery County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 5 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014757001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility will be located approximately 400 feet west of the intersection of State Highway 36 and Ustinik Road in Fort Bend County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 70 has applied for a renewal of TPDES Permit No. WQ0011486001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located on the north bank of Langham Creek, 1,800 feet west and 500 feet north of the intersection of Farm-to-Market Road 529 and Barker-Cypress Road in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 208 has applied for a renewal of TPDES Permit No. 11947-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,700,000 gallons per day. The facility is located at 7926 State Highway 6, approximately .75 mile northeast of the intersection of State Highway 6 and Farm-to-Market Road 529 (Spencer Road) in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 216 has applied for a renewal of TPDES Permit No. 12682-001, which authorizes the discharge of treated domestic wastewater at a daily average

flow not to exceed 400,000 gallons per day. The facility is located adjacent to and south of the feeder road for Interstate Highway 10, approximately 0.6 mile east of Barker Cypress Road and approximately 2.0 miles west of State Highway 6 in Harris County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 287 has applied for a renewal of TPDES Permit No. 14362-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located on the West side of Elrod Road, 2,500 feet north of the intersection of Elrod Road and Morton Road in Harris County, Texas.

CITY OF HOUSTON has applied for a renewal of TPDES Permit No. 10495-030, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 26,400,000 gallons per day. The facility is located adjacent to the confluence of Rummel Creek and Buffalo Bayou at 12901 Hermitage Street in the City of Houston in Harris County, Texas.

LIBERTY HILL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of Permit No. WQ0013278001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day via subsurface drip irrigation of non-public access evapotranspiration/absorption beds with a minimum area of 27,000 square feet. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located adjacent to and south of the intersection of State Highway 29 and State Highway Loop 332 in Williamson County, Texas.

CITY OF MADISONVILLE has applied for a renewal of TPDES Permit No. 10215-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 940,000 gallons per day. The facility is located 550 feet east of South Martin Luther King Street and 750 feet south of the intersection of South Martin Luther King Street and 4th Street in Madison County, Texas.

CITY OF MINEOLA has applied for a renewal of TPDES Permit No. 10349-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility is located approximately two miles southeast of the intersection of U.S. Highway 69 and U.S. Highway 80 in Wood County, Texas.

MONTGOMERY COUNTY UTILITY DISTRICT NO. 3 has applied for a renewal of TPDES Permit No. WQ0011203001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located south of State Highway 105, approximately 8.5 miles west of the intersection of State Highway 105 and Interstate Highway 45 in Montgomery County, Texas.

CITY OF NEW SUMMERFIELD has applied for a renewal of TPDES Permit No. WQ0013585001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located on the west side of Haws Road, 1 mile north of U.S. Highway 79 near New Summerfield in Cherokee County, Texas.

CITY OF NEW WAVERLY has applied for a renewal of TPDES Permit No. 11020-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 88,000 gallons per day. The facility is located on the west bank of the Chicken Creek, approximately 1,600 feet south of the intersection of the Chicken Creek to State Highway 150 in Walker County, Texas.

CITY OF NEW WAVERLY has applied for a renewal of TPDES Permit No. 11020-002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per

day. The facility is located approximately 0.6 mile west of the junction of Farm-to-Market Road 1375 and U.S. Highway 75 in Walker County, Texas.

QUALITY PRODUCT FINISHING, INC. which operates a prepaint cleaning and coating job shop, has applied for a renewal of TPDES Permit No. WQ0004627000, which authorizes the discharge of treated process wastewater at a daily average flow not to exceed 25,000 gallons per day via Outfall 001. The facility is located at 9610 Fairbanks North Houston Road, approximately 17 miles northwest of the City of Houston, Harris County, Texas.

SAN ISIDRO INDEPENDENT SCHOOL DISTRICT has applied for a new permit, Proposed Permit No. WQ0014701001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 9,500 gallons per day via evaporation. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day via evaporation. This facility was previously permitted under TCEQ Permit No. 12228-001 which expired June 1, 2005. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located immediately north of Farm-to-Market Road 1017, approximately one mile west of the intersection of Farm-to-Market Road 1017 and Farm-to-Market Road 2294 in Starr County, Texas.

CITY OF SANGER has applied for a new permit, proposed TPDES Permit No. WQ0014372003, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day. The facility will be located approximately 8,500 feet south of the intersection of East Willow Street and Railroad Avenue, and south of the intersection of Railroad Avenue and Rector Road in Denton County, Texas.

CITY OF SPRINGTOWN has applied for a renewal of TPDES Permit No. 10649-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 480,000 gallons per day. The facility is located east of the City of Springtown approximately 4,600 feet east of the intersection of Spring Branch Trail and 3rd Street in Parker County, Texas.

TRINITY BAY CONSERVATION DISTRICT has applied for a renewal of TPDES Permit No. 14105-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located adjacent to the intersection of Spring Branch and White's Bayou, approximately 5,200 feet northwest of the intersection of Interstate Highway 10 and State Highway 61 in Chambers County, Texas.

WEST HARDIN COUNTY CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0011274001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The facility is located immediately south of the intersection of State Highway 105 and Farm-to-Market Road 770 and approximately 1,000 feet east of Pine Island Bayou in Hardin County, Texas.

CITY OF WICHITA FALLS has applied for a renewal of TPDES Permit No. WQ0010509001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 19,910,000 gallons per day. The facility is located immediately south of River Road and approximately 1,000 feet northeast of the intersection of River Road and Rosewood Street in the City of Wichita Falls in Wichita County, Texas.

Xiu Hui Li McCulloch has applied for a renewal of TPDES Permit No. 13084-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 1600 feet northwest of the intersection

of Aldine-Westfield Road and Hartwick Road and approximately 2300 feet south of Halls Bayou in Harris County, Texas.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at 512-239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200701012

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 14, 2007



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on February 12, 2007, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Al Jabour dba Rivers Country Villas and RV Park; SOAH Docket No. 582-06-2366; TCEQ Docket No. 2005-1177-PWS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Al Jabour dba Rivers Country Villas and RV Park on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200701013

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 14, 2007



Department of Family and Protective Services

Title IV-B Child and Family Services Plan

The Texas Department of Family and Protective Services (DFPS), as the designated agency to administer Title IV-B programs in the state of Texas, is developing the annual update of the Title IV-B Child and Family Services Plan (CFSP) for Texas. Under guidelines issued by the U.S. Department of Health and Human Services, Administration for Children and Families, DFPS is required to review the progress made in the previous year toward accomplishing the goals and objectives identified in the state's five-year CFSP for the period from October 1, 2004, through September 30, 2009.

The CFSP Annual Progress and Services Report (APSR) is required for the state to receive its federal allocation for Fiscal Year 2008 authorized under Title IV-B of the Social Security Act, Subparts 1 and 2, and

the Child Abuse Prevention and Treatment Act (CAPTA). The APSR also gives states an opportunity to apply for Fiscal Year 2007 funds for the Chafee Foster Care Independence Program. The annual report referenced above must be submitted by June 29, 2007.

The purpose of this notice is to solicit input in the development of the APSR. This input will enable the agency to consider and include any changes in our state plan in order to best meet the needs of the children and families the agency serves. Members of the public can obtain more detailed information regarding the CFSP from the DFPS web site at: <http://www.dfps.state.tx.us>. The web site includes a copy of last year's APSR and a copy of the 2004-2009 CFSP.

Written comments regarding the annual update or the five-year plan may be faxed or mailed to: Texas Department of Family and Protective

Services, Attention: Henry Darrington; P.O. Box 149030, MC W-157; Austin, Texas 78714- 9030; telephone (512) 438-3412; fax (512) 438-3782. The comments must be received no later than May 1, 2007.

TRD-200700963

Gerry Williams

General Counsel

Department of Family and Protective Services

Filed: March 13, 2007

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Department of State Health Services

Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Austin	Southwest Regional Cancer Center	L06052	Austin	00	02/16/07
Austin	Sheikh Ejaz Ahmed MD	L06021	Houston	00	02/27/07
Houston	East Texas Cardiology PA	L06058	Houston	00	02/14/07
Sugar Land	Chris Xiaoguang Chen MD PA	L06054	Sugar Land	00	02/21/07
Throughout TX	Geosyntec Consultants	L06060	Austin	00	02/15/07

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Amarillo Heart Group LLP DBA Amarillo Heart Group	L04697	Amarillo	22	02/21/07
Angleton	Isotherapeutics Group LLC	L05969	Angleton	02	02/16/07
Arlington	Texas Oncology PA DBA Texas Cancer Center Arlington	L05116	Arlington	14	02/27/07
Arlington	Janik Enterprises Inc DBA Medical Physics Consultants	L03319	Arlington	10	02/13/07
Austin	St Davids Healthcare Partnership LP LLP DBA St Davids Medical Center	L00740	Austin	97	02/21/07
Austin	Austin Heart PA	L04623	Austin	43	02/13/07
Austin	Cellzdirect Inc	L05866	Austin	01	02/26/07
Austin	Austin Diagnostic Clinic	L05646	Austin	07	02/23/07
Austin	Columbia St Davids Healthcare System LP DBA South Austin Hospital	L03273	Austin	72	02/23/07
Austin	Texas Oncology PA South Austin Cancer Center	L05108	Austin	14	02/16/07
Austin	Austin White Lime Company	L02941	Austin	09	02/20/07
Beaumont	Advanced Cardiovascular Specialists LLP	L05512	Beaumont	10	02/27/07
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	106	02/20/07
Bedford	Texas Oncology PA DBA Edwards Cancer Center	L05550	Bedford	11	2/22/07
Bedford	Harris Methodist Hospital – HEB	L02303	Bedford	32	02/13/07
Brownwood	Brownwood Hospital LP DBA Brownwood Regional Medical Center	L02322	Brownwood	56	02/27/07
Conroe	Montgomery County Cardiovascular Associates PA	L05151	Conroe	15	02/23/07
Corpus Christi	Radiology Associates LLP	L04169	Corpus Christi	45	02/26/07
Corpus Christi	The Corpus Christi Medical Center Bay Area	L04723	Corpus Christi	45	02/26/07
Cypress	North Cypress Medical Center Operating Co LLC DBA North Cypress Medical Center	L06020	Cypress	01	02/21/07
Cypress	Houston Interventional Cardiology PA	L05470	Cypress	04	02/14/07
Dallas	Methodist Hospitals of Dallas	L00659	Dallas	51	02/23/07
Dallas	Tenet Health System Hospitals Dallas Inc DBA RHD Memorial Medical Center	L02314	Dallas	54	02/27/07
Dumas	Memorial Hospital	L03540	Dumas	20	02/13/07
El Paso	Cardinal Health 200 Inc	L02407	El Paso	31	02/13/07
Fort Worth	Harris Methodist Fort Worth	L01837	Fort Worth	106	02/20/07
Fort Worth	Consultants in Radiology PA	L05014	Fort Worth	02	02/26/07
Fort Worth	Kanti C Gandhi MD	L05756	Fort Worth	02	02/27/07
Fort Worth	Jaime H Castro MD	L03751	Fort Worth	07	02/27/07

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Georgetown	St Davids Georgetown Hospital	L03152	Georgetown	36	02/13/07
Grapevine	Grapevine Imaging & Pain Management LLC	L05922	Grapevine	05	02/23/07
Houston	Gammatron Inc	L02148	Houston	19	02/26/07
Houston	Radiographic Specialists Inc	L02742	Houston	53	02/26/07
Houston	American Diagnostic Tech LLC	L05514	Houston	36	02/21/07
Houston	Houston Cyclotope Partners LP DBA Cyclotope	L05585	Houston	10	02/22/07
Houston	Heart Care Center of Northwest Houston	L05539	Houston	04	02/15/07
Houston	Memorial Hermann Hospital System DBA Memorial Hospital Southwest	L00439	Houston	123	02/15/07
Houston	Columbia/HCA Healthcare Corp DBA Spring Branch Medical Center	L02473	Houston	56	02/15/07
Houston	Gulf Coast Cancer and Diagnostic Center at Southeast Inc DBA Gulf Coast Cancer Center at Southeast	L05194	Houston	10	02/14/07
Houston	Nuclear Imaging Services	L05775	Houston	25	02/13/07
Houston	Rice University Department of Biochemistry and Cell Biology	L01772	Houston	19	02/13/07
Houston	METCO	L03018	Houston	168	02/12/07
Houston	Positron Corporation	L03806	Houston	27	02/23/07
Houston	Nuclear Imaging Services	L05775	Houston	26	02/27/07
Houston	Memorial Hermann Healthcare System DBA Hermann Hospital	L04655	Houston	27	02/27/07
Houston	Columbia/HCA Healthcare Corp DBA Spring Branch Medical Center	L02473	Houston	57	02/27/07
Houston	River Oaks Imaging and Diagnostic LP DBA River Oaks Imaging and Diagnostic	L05493	Houston	09	02/27/07
Irving	Columbia Medical Center of Las Colinas Inc DBA Las Colinas Medical Center	L05084	Irving	14	02/20/07
Jacksonville	Regional Health Care Center DBA Mother Frances Hospital – Jacksonville	L05362	Jacksonville	23	02/26/07
Katy	Memorial City Cardiology Associates DBA Katy Cardiology Associates	L05713	Katy	07	02/21/07
Katy	St Catherine Health and Wellness Center	L05310	Katy	10	02/26/07
Katy	Concept Phoenix Diagnostics LP DBA Radiant Imaging and Diagnostics	L05864	Katy	02	02/27/07
Killeen	George S Rebecca MD FACC DBA Texas Cardiovascular Medicine	L05099	Killeen	07	02/27/07
La Porte	Cardiorad Inc	L05755	La Porte	11	02/15/07
Lubbock	Cardiac Diagnostic Center	L05506	Lubbock	02	02/27/07
Lubbock	Texas Tech University Health Science Center	L01869	Lubbock	82	02/23/07
Lubbock	Radiation Oncology of the South Plains PA DBA Lubbock Imaging Center	L05418	Lubbock	08	02/14/07
Lufkin	Abitibi Consolidated Corp	L03870	Lufkin	18	02/20/07
McAllen	Valley Heart Consultants	L05330	McAllen	09	02/27/07
McAllen	Rio Grande Heart Specialist of South Texas DBA Rio Grande Heart Specialist	L05509	McAllen	03	02/27/07
McAllen	McAllen Hospitals LP DBA McAllen Medical Heart Hospital	L04902	McAllen	15	02/14/07
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	78	02/20/07
Midland	Isotech Laboratories Inc	L04283	Midland	21	02/26/07
Midland	Midland County Hospital District DBA Midland Memorial Hospital	L00728	Midland	79	02/26/07
Midland	Texas Oncology PA DBA Allison Cancer Center	L05614	Midland	05	02/22/07

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amendment #	Date of Action
Odessa	Texas Oncology PA DBA West Texas Cancer Center	L05140	Odessa	10	02/23/07
Pasadena	Nuclear Medicine Associates PA	L05712	Pasadena	06	02/27/07
Pasadena	Premier Heart Specialists PA	L05750	Pasadena	05	02/15/07
Pasadena	Mohamed O Jeroudi MD PA	L05753	Pasadena	09	02/15/07
Pittsburg	Southwestern Electric Power Company	L02008	Pittsburg	18	02/20/07
Plano	Physician Reliance Network Inc Texas Oncology Plano West Cancer Center	L05896	Plano	07	02/16/07
Port Arthur	The Premcor Refining Group Inc Port Arthur Refinery	L04871	Port Arthur	12	02/21/07
Round Rock	Austin Heart PA DBA Austin Heart	L05456	Round Rock	19	02/13/07
San Antonio	Heart and Vascular Institute of Texas	L04799	San Antonio	18	02/27/07
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	160	02/27/07
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	159	02/13/07
San Antonio	Methodist Healthcare System of San Antonio LTD DBA The Gamma Knife Center	L05076	San Antonio	19	02/22/07
San Antonio	San Antonio Nuclear Cardiovascular Services Inc	L05134	San Antonio	13	02/21/07
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	226	02/21/07
San Antonio	Schnitzler Cardiovascular Consultants	L05792	San Antonio	04	02/20/07
San Marcos	Austin Heart PA DBA Austin Heart San Marcos	L05452	San Marcos	22	02/13/07
Sugar Land	Draeger Safety Inc	L05757	Sugar Land	05	02/20/07
Temple	Kings Daughters Hospital	L00666	Temple	48	02/15/07
Texarkana	Texarkana PET Imaging Institute LP	L05495	Texarkana	08	02/15/07
Texas City	CHCA Mainland LP DBA Mainland Medical Center	L02577	Texas City	33	02/15/07
The Woodlands	e+ PET Imaging VIII LP DBA PET Imaging of the Woodlands	L05747	The Woodlands	09	02/27/07
The Woodlands	Memorial Hospital The Woodlands	L03772	The Woodlands	53	02/20/07
Throughout Tx	Qal-Tek Associates LLC	L05965	Austin	02	02/20/07
Throughout Tx	ExxonMobil Chemical Company	L01135	Baytown	67	02/22/07
Throughout Tx	Brazos Valley Inspection Services Inc	L02859	Bryan	54	02/14/07
Throughout Tx	Berry Fabricators	L01575	Corpus Christi	50	02/21/07
Throughout Tx	Century Inspection Inc	L00062	Dallas	102	02/15/07
Throughout Tx	IRISNDT Inc	L04769	Deer Park	36	02/15/07
Throughout Tx	Pavetex Engineering and Testing Inc	L05533	Dripping Springs	04	02/26/07
Throughout Tx	Peachtree Construction Co	L05401	Fort Worth	08	02/26/07
Throughout Tx	Precision Energy Services Inc	L04286	Fort Worth	66	02/15/07
Throughout Tx	Lockheed Martin Corporation Lockheed Martin Aeronautics Company	L05633	Fort Worth	07	02/26/07
Throughout Tx	Landtec Engineers LLC	L05341	Fort Worth	03	02/15/07
Throughout Tx	AITEC USA Investments Inc DBA AITEC USA Inc and Weldsonix	L05718	Houston	27	02/27/07
Throughout Tx	Nuclear Sources & Services Inc DBA NSSI/Sources & Services Inc	L02991	Houston	34	02/26/07
Throughout Tx	Material Inspection Technology Inc	L05672	Houston	22	02/26/07
Throughout Tx	Tolunay Wong Engineers Inc	L04848	Houston	09	02/20/07
Throughout Tx	RTD Pipeline Services USA LP	L05985	Houston	03	02/14/07
Throughout Tx	ERM Remediation & Construction Management-Southwest LLC	L05877	Houston	02	02/26/07

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Goolsby Testing Laboratories Inc	L03115	Humble	85	02/22/07
Throughout Tx	Acuren Inspection Inc	L01774	La Porte	228	02/26/07
Throughout Tx	Endeavor Energy Resources LP DBA Jones Wireline Services	L05085	Midland	05	02/21/07
Throughout Tx	Link Field Services Inc	L05383	Olden	19	02/26/07
Throughout Tx	Techcorr USA LLC	L05972	Pasadena	18	02/22/07
Throughout Tx	Midwest Inspection Services	L03120	Perrytown	98	02/27/07
Throughout Tx	Amtech Roofing Consultants Inc	L04486	Richardson	09	02/20/07
Throughout Tx	Raba-Kistner Consultants Inc DBA Raba-Kistner-Brytest	L01571	San Antonio	59	02/19/07
Throughout Tx	Raba-Kistner Consultants Inc DBA Raba-Kistner-Brytest	L01571	San Antonio	58	02/15/07
Throughout Tx	Isbell Engineering Group Inc	L05355	Sanger	14	02/21/07
Throughout Tx	Wrangler Wireline Inc	L05404	Sour Lake	04	02/26/07
Throughout Tx	Durwood Greene Construction LP	L04753	Stafford	08	02/26/07
Throughout Tx	Blazer Inspection Inc	L04619	Texas City	45	02/21/07
Throughout Tx	Insight Health Corporation	L05504	Tiki Island	07	02/14/07
Throughout Tx	K & N Perforators Inc	L02300	Victoria	28	02/15/07
Victoria	Victoria Heart & Vascular Center	L05748	Victoria	04	02/27/07
Wichita Falls	North Texas Surgi Center	L05847	Wichita Falls	03	02/22/07

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Austin Radiological Association	L00545	Austin	126	02/14/07
Pampa	Laxmichand Kamnani DBA Pampa Heart Clinic	L05273	Pampa	04	02/23/07
Throughout TX	Texas Perforators Inc	L05086	Kingsville	09	02/14/07

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Odessa	Texas Oncology PA DBA West Texas Cancer Center	L04984	Odessa	04	02/23/07

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200701007
Cathy Campbell
General Counsel
Department of State Health Services
Filed: March 14, 2007

Notice of Agreed Orders

Notice is hereby given that the Department of State Health Services issued Agreed Orders to the following registrants:

AITEC USA, Inc. (License #L05718) of Houston. A total penalty of \$7,000 shall be paid by registrant for violations of 25 Texas Adminis-

trative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

JV Industrial Company, LTD. (License #L05785) of La Porte. A total penalty of \$3,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

J. Hawkins Chiropractic, P.A. (Registration #R20673) of Allen. A total penalty of \$3,000 shall be paid by registrant for violations of 25 Texas Administrative Code, Chapter 289. The registrant shall also comply with additional settlement agreement requirements.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, press "1" then press "0", Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200701005
Cathy Campbell
General Counsel
Department of State Health Services
Filed: March 14, 2007



Notice of Emergency Cease and Desist Order on Community Medical Clinic, P.A.

Notice is hereby given that the Department of State Health Services ordered Community Medical Clinic, PA (registrant-R14776-001) of El Paso to cease and desist from using the Fischer x-ray unit, Model Number unmarked, Serial Number unmarked, located in X-Ray at 2900 Pershing, Suite A, El Paso, until the x-ray unit has the minimum required amount of filtration. The Fischer unit needs to have a mechanical filtration control located on the collimator which prevents an exposure when the filter is removed from the beam.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200701006
Cathy Campbell
General Counsel
Department of State Health Services
Filed: March 14, 2007



Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on April 9, 2007, at 1:00 p.m. to receive public comment on the proposed Medicaid payment rates for the following specific procedure codes for powered mobility devices and wheelchair cushions. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code, §32.0282, and Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Irene Cantu by calling (512) 491-1358 at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. The proposed payment rates are as follows:

*Type of Service Codes (TOS)	Procedure Codes	Current Medicaid Rate	Proposed Medicaid Rate
J	K0010**	\$3,713.32	\$3,620.90
L	K0010**	\$285.64	\$362.09
J	K0011**	\$3,659.50	\$5,122.80
L	K0011**	\$281.50	\$512.28
J	K0800	\$1,292.77	\$1,292.77
L	K0800	\$129.28	\$129.28
J	K0801	\$2,077.69	\$2,084.22
L	K0801	\$187.49	\$208.40
J	K0802	\$2,077.69	\$2,358.66
L	K0802	\$187.49	\$235.86
J	K0813	\$2,228.30	\$2,412.40
L	K0813	\$222.83	\$241.24
J	K0814	\$2,807.60	\$3,087.80
L	K0814	\$280.76	\$308.78
J	K0815	\$3,449.10	\$3,516.30
L	K0815	\$281.50	\$351.63
J	K0816	\$3,292.10	\$3,367.40
L	K0816	\$281.50	\$336.74
J	K0820	\$2,509.60	\$2,576.60
L	K0820	\$250.96	\$257.66
J	K0821	\$3,292.10	\$3,307.70
L	K0821	\$281.50	\$330.77
J	K0822	\$3,659.50	\$4,008.10
L	K0822	\$281.50	\$400.81
J	K0823	\$3,659.50	\$4,023.70
L	K0823	\$281.50	\$402.37
J	K0824	\$4,759.00	\$4,842.70
L	K0824	\$475.90	\$484.27
J	K0825	\$3,952.00	\$4,229.60
L	K0825	\$395.20	\$422.96
J	K0826	\$6,185.70	\$6,269.30
L	K0826	\$618.57	\$626.93
J	K0827	\$4,725.70	\$5,330.90
L	K0827	\$472.57	\$533.09
J	K0828	\$6,824.40	\$6,908.20
L	K0828	\$682.44	\$690.82
J	K0829	\$5,623.80	\$6,343.70
L	K0829	\$562.38	\$634.37
J	K0835	\$3,659.50	\$4,132.30
L	K0835	\$281.50	\$413.23
J	K0836	\$3,659.50	\$4,207.50
L	K0836	\$281.50	\$420.75
J	K0837	\$4,759.00	\$4,842.70
L	K0837	\$475.90	\$484.27
J	K0838	\$4,294.60	\$4,372.20

L	K0838	\$429.46	\$437.22
J	K0839	\$6,185.70	\$6,269.30
L	K0839	\$618.57	\$626.93
J	K0840	\$8,350.60	\$9,498.30
L	K0840	\$835.06	\$949.83
J	K0841	\$4,551.50	\$4,318.60
L	K0841	\$455.15	\$431.86
J	K0842	\$3,659.50	\$4,318.60
L	K0842	\$281.50	\$431.86
J	K0843	\$5,088.20	\$5,199.60
L	K0843	\$508.82	\$519.96
J	K0848	\$3,659.50	\$5,433.60
L	K0848	\$281.50	\$543.36
J	K0849	\$3,659.50	\$5,080.70
L	K0849	\$281.50	\$508.07
J	K0850	\$5,742.10	\$6,139.90
L	K0850	\$574.21	\$613.99
J	K0851	\$5,519.20	\$5,741.40
L	K0851	\$551.92	\$574.14
J	K0852	\$6,971.00	\$7,082.60
L	K0852	\$697.10	\$708.26
J	K0853	\$7,164.00	\$7,275.60
L	K0853	\$716.40	\$727.56
J	K0854	\$9,115.60	\$9,638.60
L	K0854	\$911.56	\$963.86
J	K0855	\$8,525.30	\$9,105.10
L	K0855	\$852.53	\$910.51
J	K0856	\$3,659.50	\$5,672.30
L	K0856	\$281.50	\$567.23
J	K0857	\$3,659.50	\$5,786.00
L	K0857	\$281.50	\$578.60
J	K0858	\$6,926.20	\$7,037.60
L	K0858	\$692.62	\$703.76
J	K0859	\$6,482.80	\$6,538.10
L	K0859	\$648.28	\$653.81
J	K0860	\$9,734.10	\$10,054.10
L	K0860	\$973.41	\$1,005.41
J	K0861	\$5,570.10	\$5,681.40
L	K0861	\$557.01	\$568.14
J	K0862	\$6,926.20	\$7,037.60
L	K0862	\$692.62	\$703.76
J	K0863	\$9,734.10	\$10,054.10
L	K0863	\$973.41	\$1,005.41
J	K0864	\$11,583.30	\$11,964.50
L	K0864	\$1,158.33	\$1,196.45
J	K0733	\$30.21	\$30.21

L	K0733	\$0.00	\$0.00
J	K0734	\$0.00	\$331.47
L	K0734	\$0.00	\$0.00
J	K0735	\$0.00	\$421.78
L	K0735	\$0.00	\$0.00
J	K0736	\$0.00	\$334.19
L	K0736	\$0.00	\$0.00
J	K0737	\$0.00	\$423.06
L	K0737	\$0.00	\$0.00
J	K0868	\$0.00	Manually Priced
L	K0868	\$0.00	Manually Priced
J	K0869	\$0.00	Manually Priced
L	K0869	\$0.00	Manually Priced
J	K0870	\$0.00	Manually Priced
L	K0870	\$0.00	Manually Priced
J	K0871	\$0.00	Manually Priced
L	K0871	\$0.00	Manually Priced
J	K0877	\$0.00	Manually Priced
L	K0877	\$0.00	Manually Priced
J	K0878	\$0.00	Manually Priced
L	K0878	\$0.00	Manually Priced
J	K0879	\$0.00	Manually Priced
L	K0879	\$0.00	Manually Priced
J	K0880	\$0.00	Manually Priced
L	K0880	\$0.00	Manually Priced
J	K0884	\$0.00	Manually Priced
L	K0884	\$0.00	Manually Priced
J	K0885	\$0.00	Manually Priced
L	K0885	\$0.00	Manually Priced
J	K0886	\$0.00	Manually Priced
L	K0886	\$0.00	Manually Priced

* Type of Service Code Key: J = New Durable Medical Equipment (DME); L = Rental DME.

The proposed payment rates will be effective October 1, 2006, for procedure codes K0010** and K0011**. The proposed payment rates for all other procedure codes will be effective December 1, 2006. All previous claims, which were submitted to the Texas Medicaid & Healthcare Partnership (TMHP) on or after these effective dates, will be reprocessed automatically.

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8021(c), which addresses the reimbursement methodology for DME provided by enrolled home health agencies and DME providers/suppliers; 1 TAC §355.8441(3), which addresses the reimbursement methodology for DME under the Texas Health Steps program; and the specific fee guidelines published in Section 2.2.1 of the 2007 Texas Medicaid Provider Procedures Manual.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after March 26, 2007. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Irene Cantu by telephone at (512) 491-1358; by fax at (512)

491-1998; or by e-mail at Irene.Cantu@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Irene Cantu at (512) 491-1998; or by e-mail to Irene.Cantu@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Irene Cantu, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

***Required Notice:** *The five character codes included in this notice are obtained from the Current Procedural Terminology (CPT®), copyright 2006 by the American Medical Association (AMA). CPT is developed by the AMA as a listing of descriptive terms and five character identifying codes and modifiers for reporting medical services and procedures performed by physicians. The responsibility for the content of this notice is with HHSC and no endorsement by the AMA is intended or should be implied. The AMA disclaims responsibility for any consequences or liability attributable or related to any use, nonuse or interpretation of information contained in this notice. Fee schedules, relative value units, conversion factors and/or related components are not assigned by the AMA, are not part of CPT, and the AMA is not recommending their use. The AMA does not directly or indirectly practice medicine or dispense medical services. The AMA assumes no liability for data contained or not contained herein. Any use of CPT outside of this notice should refer to the most current Current Procedural Terminology, which contains the complete and most current listing of CPT codes and descriptive terms. Applicable FARS/DFARS apply. CPT is a registered trademark of the American Medical Association.*

TRD-200701011

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: March 14, 2007

Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by ELDER HEALTH INSURANCE COMPANY, INC., a foreign life, accident and/or health company. The home office is in Wilmington, Delaware.

Application for admission to the State of Texas by MERIDIAN SECURITY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Indianapolis, Indiana.

Application for admission to the State of Texas by MERIDIAN CITIZENS MUTUAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Indianapolis, Indiana.

Application for admission to the State of Texas by SEMINOLE CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Tamarac, Florida.

Application for admission to the State of Texas by SOUTHWEST MARINE AND GENERAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Phoenix, Arizona.

Application for admission to the State of Texas by STATE AUTO PROPERTY AND CASUALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in West Des Moines, Iowa.

Application for admission to the State of Texas by SHA, L.L.C., under the assumed name of FIRSTCARE HEALTH PLANS, a domestic health maintenance organization (HMO). The home office is in Austin, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200701015

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: March 14, 2007

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of PARTNERS ALLIANCE CORPORATION (using the assumed name PARTNERS ALLIANCE INSURANCE SERVICES), a foreign third party administrator. The home office is RAMONA, CALIFORNIA.

Application to change the name of INGENIUM BENEFITS, INC. to OMAHA INFORMATION SERVICES COMPANY, a foreign third party administrator. The home office is OMAHA, NEBRASKA.

Application to change the name of MEDICAL EYE SERVICES, INC. to MEDICAL EYE SERVICES, INC. (using the assumed name MESVISION), a foreign third party administrator. The home office is SAN FRANCISCO, CALIFORNIA.

Application to change the name of SYNERTECH HEALTH SYSTEM SOLUTIONS, LLC to DST HEALTH SOLUTIONS SERVICES, LLC, a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Application to change the name of ACORDIA NATIONAL, INC. to WELLS FARGO THIRD PARTY ADMINISTRATORS, INC., a foreign third party administrator. The home office is CHARLESTON, WEST VIRGINIA.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200701016

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: March 14, 2007

Texas Lottery Commission

Instant Game Number 788 "Texas Major League Baseball Series"

1.0 Name and Style of Game.

A. The name of Instant Game No. 788 is "TEXAS MAJOR LEAGUE BASEBALL SERIES". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 788 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 788.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play

Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, BASEBALL SYMBOL, HOMERUN SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$1,000, \$50,000, MLB SYMBOL.

D. Play Symbol Caption- The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears

under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 788 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
BASEBALL SYMBOL	AUTO
HOMERUN SYMBOL	WINALL
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$50.00	FIFTY

\$100	ONE HUND
\$1,000	ONE THOU
\$50,000	50 THOU
MLB SYMBOL	PRIZE PAK

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 788 - 1.2E

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100 or PRIZE PACK.

I. High-Tier Prize - A prize of \$1,000 \$5,000 or \$50,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (788), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 788-0000001-001.

L. Pack - A pack of "TEXAS MAJOR LEAGUE BASEBALL SERIES" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS MAJOR LEAGUE BASEBALL SERIES" Instant Game No. 788 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TEXAS MAJOR LEAGUE BASEBALL SERIES" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins prize shown for that number. If a player reveals a "BASEBALL" play symbol, the player wins the prize shown instantly. If a player reveals a "HOMERUN" play symbol, the player wins all twenty prizes instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No four or more like non-winning prize symbols on a ticket.

C. No duplicate WINNING NUMBERS play symbols on a ticket.

D. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

E. The HR (win all) play symbol will only appear on intended winning tickets as dictated by the prize structure.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

H. The MLB Prize Pack, \$1,000 and \$50,000 prize symbols will appear at least once on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS MAJOR LEAGUE BASEBALL SERIES" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100 or PRIZE PACK a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or PRIZE PACK ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS MAJOR LEAGUE BASEBALL SERIES" Instant Game prize of \$1,000, \$5,000 or \$50,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS MAJOR LEAGUE BASEBALL SERIES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "TEXAS MAJOR LEAGUE BASEBALL SERIES" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "TEXAS MAJOR LEAGUE BASEBALL SERIES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not

claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 788. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 788 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	800,000	7.50
\$10	460,000	13.04
\$15	120,000	50.00
\$20	80,000	75.00
\$50	90,000	66.67
\$100	19,350	310.08
PRIZE PACK	2,558	2,345.58
\$1,000	60	100,000.00
\$5,000	15	400,000.00
\$50,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.82. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 788 with-

out advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 788, the State Lottery Act (Texas Government Code,

Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200701010
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 14, 2007

◆ ◆ ◆
Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transaction and Opportunity for Comment

Transmission Line Easement - Nueces County

In addition to the items listed in the March 2, 2007, *Texas Register* (32 TexReg 1154), in a meeting on April 5, 2007, the Texas Parks and Wildlife Commission (the Commission) will consider a request from American Electric Power (AEP) for a modified easement to move a transmission line at Mustang Island State Park. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Prior to the date of the meeting, public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at ted.hollingsworth@tpwd.state.tx.us or in person at time of meeting.

TRD-200700993
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: March 13, 2007

◆ ◆ ◆
Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on March 6, 2007, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of En-Touch Systems for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 33955 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33955.

TRD-200700914
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 7, 2007

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 9, 2007, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Kinetic Energy LLC for Retail Electric Provider (REP) Certification, Docket Number 33968 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the geographic area of the Electric Reliability Council of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 30, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket No. 33968.

TRD-200700999
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 13, 2007

◆ ◆ ◆
Notice of Application for Amendment to Certificate of Operating Authority

On March 6, 2007, ETS Telephone Company, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its certificate of operating authority (COA) granted in COA Certificate Number 50001. Applicant intends to reflect a change in its service area and a name change.

The Application: Application of ETS Telephone Company, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 33956.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 28, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33956.

TRD-200700924
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 9, 2007

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On March 6, 2007, InfoHighway filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60293. Applicant intends to reflect a change in ownership/control.

The Application: Application of InfoHighway for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 33954.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 28, 2007. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33954.

TRD-200700923

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 9, 2007



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 5, 2007, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Transtelco, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 33953 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, T1-Private Line, Switch 56 Kbps, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the geographic area of Texas served by AT&T Texas, Verizon, and Embarq.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than March 28, 2007. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33953.

TRD-200700921

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 8, 2007



Notice of Application to Amend Certificated Service Area Boundaries in Gray County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 6, 2007, for an amendment to certificated service area boundaries within Gray County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company, an Xcel Energy Company, to Amend a Certificate of Convenience and Necessity for Electric Service Area Exception within Gray County. Docket Number 33945.

The Application: Southwestern Public Service Company seeks to provide service to a specific customer located within the certificated service area of Greenbelt Electric Cooperative, Inc. (GEC). GEC is in full

agreement with the service area exception. The amount of money expected to be expended on new facilities if the application is granted is approximately \$9,871.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than March 30, 2007, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 33945.

TRD-200700920

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 8, 2007



Notice of Application to Amend Certificated Service Area Boundaries in Kendall County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 7, 2007, for an amendment to certificated service area boundaries within Kendall County, Texas.

Docket Style and Number: Joint Application of Central Texas Electric Cooperative, Inc. and Bandera Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Kendall County. Docket Number 33957.

The Application: Central Texas Electric Cooperative, Inc. and Bandera Electric Cooperative, Inc. (Applicants) seek to realign their existing service area boundaries to accommodate a new planned subdivision. The developer of the new subdivision has requested realignment of the existing service area boundaries along the proposed lot lines and streets to avoid confusion with service providers.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than March 30, 2007, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 33957.

TRD-200700931

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 9, 2007



Notice of Application to Amend Certificated Service Area Boundaries in Wheeler County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 9, 2007, for an amendment to certificated service area boundaries within Wheeler County, Texas.

Docket Style and Number: Application of Greenbelt Electric Coop., Inc. for a Certificate of Convenience and Necessity for an Electric Service Area Exception within Wheeler County. Docket Number 33969.

The Application: Greenbelt Electric Cooperative, Inc. (GBEC) filed an application for a service area exception to amend certificated service area boundaries within Wheeler County, Texas. GBEC seeks to provide electric service to a specific customer for a compressor sta-

tion located within the certificated service area of Southwestern Public Service Company (SPS). SPS is in full agreement with the territory amendment. The amount of money expected to be expended on new facilities if the application is granted is approximately \$1,500.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than March 30, 2007 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 33969.

TRD-200700997
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 13, 2007



Notice of Application to Amend Certificated Service Area Boundaries in Wheeler County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on March 9, 2007, for an amendment to certificated service area boundaries within Wheeler County, Texas.

Docket Style and Number: Application of Greenbelt Electric Coop., Inc. for a Certificate of Convenience and Necessity for an Electric Service Area Exception within Wheeler County. Docket Number 33970.

The Application: Greenbelt Electric Cooperative, Inc. (GBEC) filed an application for a service area exception to amend certificated service area boundaries within Wheeler County, Texas. GBEC seeks to provide service to a specific customer for a water well located within the certificated service area of Southwestern Public Service Company (SPS). SPS is in full agreement with the territory amendment. The amount of money expected to be expended on new facilities if the application is granted is approximately \$1,500.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than March 30, 2007 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 33970.

TRD-200700998
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 13, 2007



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on March 12, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on March 22, 2007.

Docket Title and Number: Application of Windstream Communications Kerrville, LP for Approval of LRIC Study for Second Access Line

Bundle Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33984.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 33984. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 33984.

TRD-200701000
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 13, 2007



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on March 12, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on March 22, 2007.

Docket Title and Number: Application of Texas Windstream, Inc. for Approval of LRIC Study for Second Access Line Bundle Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33981.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 33981. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 33981.

TRD-200701001
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 13, 2007



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on March 12, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on March 22, 2007.

Docket Title and Number: Application of Windstream Sugar Land, Inc. for Approval of LRIC Study for Second Access Line Bundle Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33982.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 33982. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 33982.

TRD-200701002
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 13, 2007



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.214

Notice is given to the public of the filing on March 12, 2007, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on March 22, 2007.

Docket Title and Number: Application of Windstream Communications Southwest, Inc. for Approval of LRIC Study for Second Access Line Bundle Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33983.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 33983. Written comments or recommendations should be filed no later than forty-five (45) days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 33983.

TRD-200701003
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 13, 2007



Notice of a Petition for Declaratory Order

Notice is given to the public of a petition for declaratory order with the Public Utility Commission of Texas on March 7, 2007.

Docket Style and Number: Joint Petition of Electric Utilities for Declaratory Order, Docket Number 33959.

The Application: AEP Texas Central Company, AEP Texas North Company, CenterPoint Energy Houston Electric, LLC and Southwestern Electric Power Company (collectively Petitioners or Electric Utilities) filed a joint petition for declaratory order regarding the standards that are applicable to the construction of street lighting facilities in the rights-of-way controlled by the Texas Department of Transportation.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing-and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 33959.

TRD-200700996
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 13, 2007



Texas Residential Construction Commission

Notice of Applications for Designation as a "Texas Star Builder"

The Texas Residential Construction Commission (commission) adopted rules regarding the procedures for designation as a "Texas Star Builder" at 10 TAC §303.300. The rules were adopted pursuant to §416.011, Property Code (Act effective September 1, 2003), which provides that the commission shall establish rules and procedures through which a builder can be designated as a "Texas Star Builder." The commission's rules for application for designation can be found on the commission's website at www.trcc.state.tx.us.

10 TAC §303.300(i)(2) requires the commission to publish in the *Texas Register* notice of the application of each person seeking to become designated as a "Texas Star Builder" registered under this subchapter. The commission will accept public comment on each application for 21 days after the date of publication of the notice. Information provided in response to this notice will be utilized in evaluating the applicants for approval. The Texas Star Builder designation requires that a builder or remodeler demonstrate that its education, experience and commitment to professionalism sets the builder or remodeler apart from its peers and offers some assurance to its customers that its quality of service and construction will be above average.

Pursuant to 10 TAC §303.300(i)(2) the commission hereby notices the application for designation as a "Texas Star Builder" of:

Presentation Builders, dba Vanguard Design Build, 401 E. 53rd Street, Suite 101, Austin, Texas 78751; TRCC builder registration certificate #23820; and the registered agent is Andrew Mitchell.

Interested persons may send written comments regarding this application to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711-3144. Comments regarding this application will be accepted for 21 days following the date of publication of this notice in the *Texas Register*. Thereafter, the comments will not be considered as timely filed.

TRD-200700916
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Filed: March 8, 2007



Texas Department of Savings and Mortgage Lending

Notice of Application of Change of Control of a State Savings Bank

Notice is hereby given that, on March 2, 2007, an application was filed with the Department of Savings and Mortgage Lending Commissioner of Texas for a change of control of a state savings bank, Olympic Savings, ssb, ("Olympic"), Refugio, Refugio County, Texas, by Woodforest Financial Group, Inc., ("Woodforest"), a Texas corporation and financial holding company, The Woodlands, Montgomery County, Texas, to facilitate the conversion of Olympic to a federal savings bank to be known as Woodforest Bank, FSB.

This application is filed pursuant to 7 TAC §§75.121 - 75.127 of the Rules and Regulations Applicable to Texas Savings Banks. These Rules are on file with the Secretary of State, Texas Register Section, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin, Texas 78705.

TRD-200700935

Danny Payne

Commissioner

Texas Department of Savings and Mortgage Lending

Filed: March 9, 2007



Supreme Court of Texas

Amended Order on Final Approval of Texas Rule of Judicial Administration 14

Misc. Docket No. 07-9036

It is hereby **ORDERED** that:

1. Pursuant to the Texas Constitution, article V, section 31(a), and Texas Government Code §74.024, the Texas Rules of Judicial Administration are amended by adding Rule 14, which addresses statewide certification to serve civil process, as follows.

2. As ordered in Misc. Docket No. 06-9141 (Oct. 19, 2006), Rule 14 was published for comment on the Court's website and in the December 2006 edition of the *Texas Bar Journal*. After considering the public comments received, the Court made revisions to Rule 14 as published for comment, which revisions were appended, in both a clean version and a redline version reflecting the changes, to the order in Misc. Docket No. 07-9032 (Feb. 27, 2007).

3. As published in Misc. Docket No. 07-9032, Rule 14.5(b)(3) contained an erroneous provision requiring that the notice to be sent to a process server who is the subject of a filed complaint state that no oral testimony will be received at the hearing on the complaint. As originally published for comment, Rule 14.5(d)(2) did not provide for oral testimony at the complaint hearing. Although this provision was subsequently revised in Misc. Docket No. 07-9032 to authorize such oral testimony, no corresponding revision was made to Rule 14.5(b)(3). Rule 14.5(b)(3) is now hereby amended to correspond with revised Rule 14.5(d)(2). This change, along with the changes previously published in Misc. Docket No. 07-9032, is reflected in two versions of Rule 14 appended to this order: a clean copy followed by a redline version that highlights all revisions made to the version originally published for comment.

4. This rule, as revised, takes effect April 2, 2007.

5. With respect to this order, in place of Misc. Docket No. 07-9032, the Clerk is directed to:

- a. file a copy of this Order with the Secretary of State;
- b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

c. send a copy of this Order to each elected member of the Legislature; and

d. submit a copy of this Order for publication in the *Texas Register*.

SIGNED AND ENTERED, this 5th day of March, 2007.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

J. Dale Wainwright, Justice

Scott Brister, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Rule 14. Statewide Certification to Serve Civil Process

14.1 Purpose

Under Rules 103 and 536 of the Texas Rules of Civil Procedure, as amended effective July 1, 2005, civil process may be served by--in addition to sheriffs and constables and other persons authorized by law, and persons at least 18 years of age authorized by written order of court--"any person certified under order of the Supreme Court." To improve the standards of practice for private service of process, and to provide a list of persons eligible to serve process in trial courts statewide, the Court--simultaneous with amending Rules 103 and 536--also issued companion orders creating the Process Server Review Board and establishing the basic framework for certification and revocation thereof by the Board. This Rule is intended to build upon that framework by implementing specific procedures to guide the Board's actions in processing applications, investigating complaints regarding certified process servers, and determining disciplinary action under appropriate circumstances.

14.2 Definitions

(a) *Board* means the Process Server Review Board.

(b) *Chair* means the Chair of the Board, as appointed by the Supreme Court.

14.3 General Provisions

(a) *Membership of Board.* Members of the Board are appointed by the Supreme Court of Texas. Unless an appointment order specifies otherwise, members are appointed to a three-year term.

(b) *General Procedure.*

(1) A majority of members of the Board shall constitute a quorum.

(2) After a quorum has been established at a Board meeting, the Board may decide, upon a majority vote of those present, any matter properly before it.

- (3) The Chair or his/her designee shall preside at Board meetings.
- (4) The Board may, in its discretion, grant continuances with regard to hearings and other matters before the Board.

(5) The Office of Court Administration shall provide clerical assistance to the Board.

(c) Methods of Service.

(1) Service of any written notice or other document required to be served under this Rule may be accomplished:

(A) by delivering a copy to the person to be served, or their attorney, either in person or by agent or by courier receipted delivery or by registered or certified mail, to the person's last known address; or

(B) by fax, to the person's current fax number.

(2) Service by mail shall be complete upon deposit of the notice or other paper, enclosed in a postage-paid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Post Office. Service by fax shall be complete upon confirmation of receipt. Service by fax after 5:00 p.m. local time of the recipient shall be deemed served on the following day.

(d) Counting Time.

In computing any period of time prescribed or allowed by this Rule, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Saturdays, Sundays, and legal holidays shall otherwise be counted for purposes of calculating time periods under this Rule, unless the time period is for five days or less, in which case Saturdays, Sundays, and legal holidays shall not be counted for any purpose.

14.4 Certification

(a) Application.

(1) A person seeking statewide certification must file with the Clerk of the Supreme Court a sworn application in the form prescribed by the Supreme Court, available from the Clerk of the Court or on the Court's website.

(2) The application must contain a statement indicating whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude. The application must include a criminal history record obtained within the preceding 90 days from the Texas Department of Public Safety in Austin, Texas. If an applicant's criminal history reflects legal proceedings for which a final disposition is not clearly shown, the applicant bears the burden of establishing that he or she has not been convicted of a felony or of a misdemeanor involving moral turpitude. The Board may deny certification to an applicant convicted of a felony or of a misdemeanor involving moral turpitude. If an applicant's criminal history reflects that the applicant was charged with a felony or a misdemeanor involving moral turpitude and the charges resulted in an outcome other than acquittal or conviction (such as pre-trial diversion, probation, deferred adjudication, community supervision, or similar result), the Board may consider such history in determining whether the application should be granted.

(3) The application must include a certificate from the director of a civil process service course, approved for certification in every state court pursuant to Supreme Court order, stating that the applicant has completed the approved course within the prior year. The applicant bears the burden of establishing that he or she has completed within

the prior year a course approved for certification in every state court pursuant to Supreme Court order.

(b) Review of Application; Rejection; Approval.

(1) Applications shall be reviewed and either approved by the Board or rejected for good cause stated. In appropriate circumstances, the Board may approve applications on a conditional or probationary basis.

(2) The Board may, upon request, allow an applicant with criminal history to appear before the Board and provide oral testimony, documentation, or other information pertinent to the applicant's criminal history. Testimony must be given under penalty of perjury. The Board may limit the number of witnesses appearing and the time allotted for a witness's testimony.

(3) The Board shall promptly notify each applicant in writing of its decision. For applicants rejected, and for applicants approved on a conditional or probationary basis, the Board shall specify the good cause for its decision.

(4) An applicant who is dissatisfied with the Board's decision regarding his or her application may appeal the Board's decision as provided in Rule 14.7, but must first request reconsideration of the decision as provided in Rule 14.6.

(5) For each person certified, the Board shall post on a list maintained on the Supreme Court website the person's name and an assigned identification number.

(6) Certification is effective for three years from the last day of the month it issues, unless revoked or suspended under this Rule.

(c) Renewal of Certification.

(1) A certified process server desiring to renew an existing certification must file with the Board a new application, including a current criminal history statement, criminal history record, and course certificate as specified under Rule 14.4(a).

(2) A certified process server who desires to avoid any lapse in certification during renewal should submit a completed application no sooner than ninety days before the expiration date defined under Rule 14.4(b)(6), and no later than forty-five days before the expiration date. Renewal applications filed more than ninety days before the expiration date will not be processed. However, this provision does not guarantee that a timely filed renewal application will be approved prior to expiration of an existing certification, and it is the responsibility of each process server to ensure, prior to serving any process under statewide certification, that his or her statewide certification remains in effect.

14.5 Disciplinary Actions

(a) Conduct Subject to Disciplinary Action. The Board may revoke or suspend any certification issued under this Rule, or issue a letter of reprimand to a certified process server, on a verified complaint after notice and opportunity to respond, for:

(1) conviction of a felony offense, or of a misdemeanor offense involving moral turpitude; or

(2) other good cause as determined by the Board.

A certified process server who, after obtaining statewide certification, is convicted of a felony offense or of a misdemeanor offense involving moral turpitude shall immediately notify the Clerk of the Supreme Court and cease to serve process pursuant to his or her statewide certification.

(b) Filing of Complaint Against Certified Process Server.

(1) A person desiring to make a complaint against a certified process server shall use the official complaint form approved by the Board and provided on the Court's website.

(2) The complaint shall be completed and signed under oath, with all pertinent documentary evidence attached thereto, and submitted to the Board's mailing address provided on the Court's website.

(3) Upon receipt of a properly executed complaint, the Board shall furnish to the certified process server against whom the complaint was filed copies of the complaint and any original attachments thereto, as well as notice stating: (1) the date the Board is scheduled to consider the complaint; (2) that the Board may revoke the process server's statewide certification or impose other disciplinary action after investigation and consideration of the complaint and any written response submitted by the process server and received by the Board at least three business days prior to the meeting at which the complaint will be considered; and (3) that the Board may allow the complainant, the process server, and any fact or character witnesses to appear at the meeting and present oral testimony.

(4) The Board may undertake an investigation on its own initiative based upon a credible report or findings of a judicial officer describing conduct that could be subject to disciplinary action under this Rule.

(c) Investigation of Complaints.

(1) A complaint committee consisting of three or more Board members named by the Chair, or any Board members designated by the Chair to perform this duty ad hoc, shall investigate properly executed complaints and determine if they are supported by credible evidence.

(2) Following investigation, the status of a complaint shall be reported to the Board at its next regularly scheduled meeting, or as soon as practicable thereafter, by the head of the complaint committee or any other member designated by the Chair to investigate the complaint.

(d) Hearing of Complaints.

(1) Any written response submitted by the process server, including any additional documentary evidence, must be received by the Board at least three business days prior to the meeting at which the complaint will be considered.

(2) In addition to any written response submitted under subsection (1), the Board may allow the complainant, the process server, and any fact or character witnesses to appear at the meeting and present oral testimony. Testimony must be given under penalty of perjury. The Board may limit the number of witnesses appearing and the time allotted for a witness's testimony.

(3) After hearing a report on a complaint, and considering any written response timely submitted by the process server against whom the complaint was filed, and any testimony, the Board shall vote on the status of the complaint, unless such determination is continued until another Board meeting for good cause.

(4) The Board shall serve upon the affected process server notice of the Board's determination regarding the complaint and any disciplinary action imposed. In its written statement, the Board must specify the good cause for disciplinary action.

(5) A process server who is dissatisfied with a Board decision imposing disciplinary action may appeal the Board's decision as provided in Rule 14.7, but must first request reconsideration of the decision as provided in Rule 14.6.

(6) Unless the Board directs otherwise, imposition of any disciplinary action is effective immediately following a majority vote to impose that action and is not stayed pending appeal.

(7) Complaints determined by the Board to be unsubstantiated or unfounded shall be dismissed.

(8) Nothing in this provision shall preclude negotiation of an agreed disciplinary resolution either before or after a complaint is considered by the Board. An agreed disciplinary resolution shall not be effective until approved by the Board.

14.6 Reconsideration of Board Decisions

(a) Request for Reconsideration.

(1) Any certified process server may request reconsideration of a decision by the Board pertaining to an application for certification or a disciplinary action.

(2) A reconsideration request must be in writing and must be received by the Board within thirty (30) days after the date the Board serves notice of the decision for which reconsideration is requested.

(3) The request must identify the process server and the decision of the Board for which reconsideration is requested, and must succinctly state the reason for reconsideration.

(b) Reconsideration Procedure.

(1) After receiving a request for reconsideration, the Chair will place the matter on the agenda for the next scheduled meeting of the Board.

(2) The Board may allow the process server seeking reconsideration to appear at the meeting and present additional testimony. Testimony must be given under penalty of perjury. The Board may limit the number of witnesses appearing and the time allotted for a witness's testimony.

(3) After reconsidering a decision, the Board shall vote on the matter unless such determination is continued until another Board meeting for good cause.

(4) The Board must send the process server written notice stating its decision on reconsideration.

(c) Request for Reconsideration Is Necessary Prerequisite for Appeal. A request for reconsideration is a necessary prerequisite to filing an appeal of a Board decision under Rule 14.7.

14.7 Appeal of Board Decisions

(a) Procedure for Appealing.

(1) Any certified process server seeking to appeal a Board decision pertaining to an application for certification or a disciplinary action shall submit a written appeal of such decision to the General Counsel for the Office of Court Administration within thirty (30) days after the date the written decision is served upon the process server. The appeal should be addressed to the General Counsel at the mailing address listed on the "Contact Information" page of OCA's website, currently located at <http://www.courts.state.tx.us/contact.asp>.

(2) The General Counsel shall promptly forward the appeal to a special committee of three Administrative Regional Presiding Judges, *see* Tex. Gov't Code §74.041. The committee shall be chosen on a basis predetermined by the Presiding Judges, but shall not include the Presiding Judge for the Administrative Region in which the appellant resided at the time of the Board's decision.

(3) The General Counsel shall notify the Board of the filing of an appeal and, upon request, shall make the appeal materials available to the Board or its legal representative.

(4) The appeal must be in a form, or pursuant to a policy, approved by the Regional Presiding Judges, if an appellate form or a policy has been approved by the Regional Presiding Judges. If no appellate form

or policy has been approved, the appeal need not be in any particular form, but it must contain (1) a copy of the notice of the Board's decision with which the process server is dissatisfied; (2) a statement succinctly explaining why the process server is dissatisfied with the Board's decision; and (3) a copy of the Board's notice reflecting its decision on reconsideration.

(5) The Office of Court Administration shall adopt rules or policies to ensure that any OCA employee who provides clerical, administrative, or other direct support to the Board does not communicate regarding the substance of any appeal under this Rule with any other OCA employee who facilitates the appeal process under this Rule. The rules or policies shall also provide that OCA employees may communicate regarding non-substantive aspects of appeals, such as to ensure the completeness and accuracy of appeal materials to be forwarded to the special committee.

(b) *Consideration of Appeal.*

(1) Upon receiving notice of an appeal of a disciplinary action, the Board shall provide to the General Counsel, and the General Counsel shall submit to the special committee, electronic or paper copies of (1) the complaint and any original attachments; (2) any written response timely submitted by the process server; (3) notice of the Board's decision imposing disciplinary action; (4) the Board's notice reflecting its decision on reconsideration; and (5) any other documents or written evidence considered by the Board pertaining to the decision complained of on appeal. The Board shall provide a copy of any of the above items (1) - (5) to an appellant upon request, and may charge costs for such copies as set forth in Rule 12.7 of the Rules of Judicial Administration.

(2) Upon receiving notice of an appeal of a decision denying application for certification, the Board shall provide to the General Counsel, and the General Counsel shall submit to the special committee, electronic or paper copies of (1) the process server's application for statewide certification, including a record of the applicant's criminal history from the Department of Public Safety; (2) a written statement of the Board's decision denying the application; (3) any additional documentation considered by the Board related to the applicant's criminal history; (4) the Board's notice reflecting its decision on reconsideration; and (5) any other documents or written evidence considered by the Board pertaining to the decision complained of on appeal. The Board shall provide a copy of any of the above items (1)-(5) to an appellant upon request, and may charge costs for such copies as set forth in Rule 12.7 of the Rules of Judicial Administration.

(3) The special committee shall consider the appeal under an abuse of discretion standard for all issues except those involving pure questions of law, for which the standard of review shall be de novo. Under either standard, the burden is on the appellant to establish that the Board's decision was erroneous.

(4) Absent approval by the special committee, submission of materials other than those described under Rule 14.7(b)(1)-(2) is prohibited. The special committee may, in its sole discretion, allow a process server to submit additional written materials relating to the appeal. Otherwise, only the written materials described under Rule 14.7(b)(1)-(2) will be considered. A request to submit additional materials must clearly identify the additional materials for which inclusion is requested.

(5) The special committee may consider the appeal without a hearing, and may conduct its deliberations by any appropriate means. The special committee may, in its sole discretion, conduct a hearing and allow testimony from the affected process server or any other person with knowledge of the underlying facts relating to the application or the disciplinary action complained of.

(6) After consideration of the appeal, the special committee shall notify the Board and the process server in writing of its decision either affirming or reversing the Board's decision. No rehearing or further appeal shall be allowed.

Rule 14. Statewide Certification to Serve Civil Process

14.1 Purpose

Under Rules 103 and 536 of the Texas Rules of Civil Procedure, as amended effective July 1, 2005, civil process may be served by--in addition to sheriffs and constables and other persons authorized by law, and persons at least 18 years of age authorized by written order of court--"any person certified under order of the Supreme Court." To improve the standards of practice for private service of process, and to provide a list of persons eligible to serve process in trial courts statewide, the Court--simultaneous with amending Rules 103 and 536--also issued companion orders creating the Process Server Review Board and establishing the basic framework for certification and revocation thereof by the Board. This Rule is intended to build upon that framework by implementing specific procedures to guide the Board's actions in processing applications, investigating complaints regarding certified process servers, and determining disciplinary action under appropriate circumstances.

14.2 Definitions

(a) *Board* means the Process Server Review Board.

(b) *Chair* means the Chair of the Board, as appointed by the Supreme Court.

14.3 General Provisions

(a) *Membership of Board.* Members of the Board are appointed by the Supreme Court of Texas. Unless an appointment order specifies otherwise, members are appointed to a three-year term.

(b) *General Procedure.*

(1) A majority of members of the Board shall constitute a quorum.

(2) After a quorum has been established at a Board meeting, the Board may decide, upon a majority vote of those present, any matter properly before it.

(3) The Chair or his/her designee shall preside at Board meetings.

(4) The Board may, in its discretion, grant continuances with regard to hearings and other matters before the Board.

(5) The Office of Court Administration shall provide clerical assistance to the Board.

(c) *Methods of Service.*

(1) Service of any written notice or other document required to be served under this Rule may be accomplished:

(A) by delivering a copy to the person to be served, or their attorney, either in person or by agent or by courier receipted delivery or by registered or certified mail, to the person's last known address; or

(B) by fax, to the person's current fax number.

(2) Service by mail shall be complete upon deposit of the notice or other paper, enclosed in a postage-paid, properly addressed envelope, in a post office or official depository under the care and custody of the United States Post Office. Service by fax shall be complete upon confirmation of receipt. Service by fax after 5:00 p.m. local time of the recipient shall be deemed served on the following day.

(d) *Counting Time.*

In computing any period of time prescribed or allowed by this Rule, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Saturdays, Sundays, and legal holidays shall otherwise be counted for purposes of calculating time periods under this Rule, unless the time period is for five days or less, in which case Saturdays, Sundays, and legal holidays shall not be counted for any purpose.

14.4 Certification

(a) Application.

(1) A person seeking statewide certification must file with the Clerk of the Supreme Court a sworn application in the form prescribed by the Supreme Court, available from the Clerk of the Court or on the Court's website.

(2) The application must contain a statement ~~that~~ indicating whether the applicant has not ever been convicted of a felony or of a misdemeanor involving moral turpitude. The application must include a criminal history record obtained within the preceding 90 days from the Texas Department of Public Safety in Austin, Texas. ¶ If an applicant's criminal history reflects legal proceedings for which a final disposition is not clearly shown, the applicant bears the burden of establishing that he or she has not been convicted of a felony or of a misdemeanor involving moral turpitude. The Board may deny certification to an applicant convicted of a felony or of a misdemeanor involving moral turpitude. If an applicant's criminal history reflects that the applicant was charged with a felony or a misdemeanor involving moral turpitude and the charges resulted in an outcome other than acquittal or conviction (such as pretrial diversion, probation, deferred adjudication, community supervision, or similar result), the Board may consider such history in determining whether the application should be granted.

(3) The application must include a certificate from the director of a civil process service course, approved for certification in every state court pursuant to Supreme Court order, stating that the applicant has completed the approved course within the prior year. The applicant bears the burden of establishing that he or she has completed within the prior year a course approved for certification in every state court pursuant to Supreme Court order.

(b) Review of Application; Rejection; Approval.

(1) Applications shall be reviewed and either approved by the Board or rejected for good cause stated. In appropriate circumstances, the Board may approve applications on a conditional or probationary basis.

(2) The Board may, upon request, allow an applicant with criminal history to appear before the Board and provide oral testimony, documentation, or other information pertinent to the applicant's criminal history. Testimony must be given under penalty of perjury. The Board may limit the number of witnesses appearing and the time allotted for a witness's testimony.

(23) The Board shall promptly notify each applicant in writing of its decision. For applicants rejected, and for applicants approved on a conditional or probationary basis, the Board shall specify the good cause for its decision.

(34) An applicant who is dissatisfied with the Board's decision regarding his or her application may appeal the Board's decision as provided in Rule 14.7, but must first request reconsideration of the decision as provided in Rule 14.6.

(45) For each person certified, the Board shall post on a list maintained on the Supreme Court website the person's name and an assigned identification number.

(56) Certification is effective for three years from the last day of the month it issues, unless revoked or suspended under this Rule.

(c) Renewal of Certification.

(1) A certified process server desiring to renew an existing certification must file with the Board a new application, including a current criminal history statement, criminal history record, and course certificate as specified under Rule 14.4(a).

(2) A certified process server who desires to avoid any lapse in certification during renewal should submit a completed application no sooner than ninety days before the expiration date defined under Rule 14.4(b)(56), and no later than forty-five days before the expiration date. Renewal applications filed more than ninety days before the expiration date will not be processed. However, this provision does not guarantee that a timely filed renewal application will be approved prior to expiration of an existing certification, and it is the responsibility of each process server to ensure, prior to serving any process under statewide certification, that his or her statewide certification remains in effect.

14.5 Disciplinary Actions

(a) *Conduct Subject to Disciplinary Action.* The Board may revoke or suspend any certification issued under this Rule, or issue a letter of reprimand to a certified process server, on a verified complaint after notice and opportunity to respond, for:

(1) conviction of a felony offense, or of a misdemeanor offense involving moral turpitude; or

(2) other good cause as determined by the Board.

A certified process server who, after obtaining statewide certification, is convicted of a felony offense or of a misdemeanor offense involving moral turpitude shall immediately notify the Clerk of the Supreme Court and cease to serve process pursuant to his or her statewide certification.

(b) Filing of Complaint Against Certified Process Server.

(1) A person desiring to make a complaint against a certified process server shall use the official complaint form approved by the Board and provided on the Court's website.

(2) The complaint shall be completed and signed under oath, with all pertinent documentary evidence attached thereto, and submitted to the Board's mailing address provided on the Court's website.

(3) Upon receipt of a properly executed complaint, the Board shall furnish to the certified process server against whom the complaint was filed copies of the complaint and any original attachments thereto, as well as notice stating: (1) the date the Board is scheduled to consider the complaint; (2) that the Board may revoke the process server's statewide certification or impose other disciplinary action after investigation and consideration of the complaint and any written response submitted by the process server and received by the Board at least three business days prior to the meeting at which the complaint will be considered; and (3) that no live testimony regarding the complaint or presentation by the affected process server will be permitted at the meeting the Board may allow the complainant, the process server, and any fact or character witnesses to appear at the meeting and present oral testimony.

(4) The Board may undertake an investigation on its own initiative based upon a credible report or findings of a judicial officer describing conduct that could be subject to disciplinary action under this Rule.

(c) Investigation of Complaints.

(1) A complaint committee consisting of three or more Board members named by the Chair, or any Board members designated by the Chair to perform this duty ad hoc, shall investigate properly executed complaints and determine if they are supported by credible evidence.

(2) Following investigation, the status of a complaint shall be reported to the Board at its next regularly scheduled meeting, or as soon as practicable thereafter, by the head of the complaint committee or any other member designated by the Chair to investigate the complaint.

(d) Hearing of Complaints.

(1) Any written response submitted by the process server, including any additional documentary evidence, must be received by the Board at least three business days prior to the meeting at which the complaint will be considered.

(2) ~~No live testimony relating to the actions complained of will be permitted at the meeting.~~ In addition to any written response submitted under subsection (1), the Board may allow the complainant, the process server, and any fact or character witnesses to appear at the meeting and present oral testimony. Testimony must be given under penalty of perjury. The Board may limit the number of witnesses appearing and the time allotted for a witness's testimony.

(3) After hearing a report on a complaint, and considering any written response timely submitted by the process server against whom the complaint was filed, and any testimony, the Board shall vote on the status of the complaint, unless such determination is continued until another Board meeting for good cause.

(4) The Board shall serve upon the affected process server notice of the Board's determination regarding the complaint and any disciplinary action imposed. In its written statement, the Board must specify the good cause for disciplinary action.

(5) A process server who is dissatisfied with a Board decision imposing disciplinary action may appeal the Board's decision as provided in Rule 14.7, but must first request reconsideration of the decision as provided in Rule 14.6.

(6) Unless the Board directs otherwise, imposition of any disciplinary action is effective immediately following a majority vote to impose that action and is not stayed pending appeal.

(7) Complaints determined by the Board to be unsubstantiated or unfounded shall be dismissed.

(8) Nothing in this provision shall preclude negotiation of an agreed disciplinary resolution either before or after a complaint is considered by the Board. An agreed disciplinary resolution shall not be effective until approved by the Board.

14.6 Reconsideration of Board Decisions

(a) Request for Reconsideration.

(1) Any certified process server may request reconsideration of a decision by the Board pertaining to an application for certification or a disciplinary action.

(2) A reconsideration request must be in writing and must be received by the Board within thirty (30) days after the date the Board serves notice of the decision for which reconsideration is requested.

(3) The request must identify the process server and the decision of the Board for which reconsideration is requested, and must succinctly state the reason for reconsideration.

(b) Reconsideration Procedure.

(1) After receiving a request for reconsideration, the Chair will place the matter on the agenda for the next scheduled meeting of the Board.

(2) The Board may allow the process server seeking reconsideration to appear at the meeting and present additional testimony. Testimony must be given under penalty of perjury. The Board may limit the number of witnesses appearing and the time allotted for a witness's testimony.

(23) After reconsidering a decision, the Board shall vote on the matter unless such determination is continued until another Board meeting for good cause.

(34) The Board must send the process server written notice stating its decision on reconsideration.

(c) Request for Reconsideration Is Necessary Prerequisite for Appeal.
A request for reconsideration is a necessary prerequisite to filing an appeal of a Board decision under Rule 14.7.

14.7 Appeal of Board Decisions

(a) Procedure for Appealing.

(1) Any certified process server seeking to appeal a Board decision pertaining to an application for certification or a disciplinary action shall submit a written appeal of such decision to the General Counsel for the Office of Court Administration within thirty (30) days after the date the written decision is served upon the process server. The appeal should be addressed to the General Counsel at the mailing address listed on the "Contact Information" page of OCA's website, currently located at <http://www.courts.state.tx.us/contact.asp>.

(2) The General Counsel shall promptly forward the appeal to a special committee of three Administrative Regional Presiding Judges, *see* Tex. Gov't Code §74.041. The committee shall be chosen on a basis predetermined by the Presiding Judges, but shall not include the Presiding Judge for the Administrative Region in which the appellant resided at the time of the Board's decision.

(3) The General Counsel shall notify the Board of the filing of an appeal and, upon request, shall make the appeal materials available to the Board or its legal representative.

(4) The appeal must be in a form, or pursuant to a policy, approved by the Regional Presiding Judges, if an appellate form or a policy has been approved by the Regional Presiding Judges. If no appellate form or policy has been approved, the appeal need not be in any particular form, but it must contain (1) a copy of the notice of the Board's decision with which the process server is dissatisfied; (2) a statement succinctly explaining why the process server is dissatisfied with the Board's decision; and (3) a copy of the Board's notice reflecting its decision on reconsideration.

(5) The Office of Court Administration shall adopt rules or policies to ensure that any OCA employee who provides clerical, administrative, or other direct support to the Board does not communicate regarding the substance of any appeal under this Rule with any other OCA employee who facilitates the appeal process under this Rule. The rules or policies shall also provide that OCA employees may communicate regarding non-substantive aspects of appeals, such as to ensure the completeness and accuracy of appeal materials to be forwarded to the special committee.

(b) Consideration of Appeal.

(1) Upon receiving notice of an appeal of a disciplinary action, the Board shall provide to the General Counsel, and the General Counsel shall submit to the special committee, electronic or paper copies of (1) the complaint and any original attachments; (2) any written response timely submitted by the process server; (3) notice of the Board's decision imposing disciplinary action; (4) the Board's notice reflecting its decision on reconsideration; and (5) any other documents or written ev-

idence considered by the Board pertaining to the decision complained of on appeal. The Board shall provide a copy of any of the above items (1)-(5) to an appellant upon request, and may charge costs for such copies as set forth in Rule 12.7 of the Rules of Judicial Administration.

(2) Upon receiving notice of an appeal of a decision denying application for certification, the Board shall provide to the General Counsel, and the General Counsel shall submit to the special committee, electronic or paper copies of (1) the process server's application for statewide certification, including a record of the applicant's criminal history from the Department of Public Safety; (2) a written statement of the Board's decision denying the application; (3) any additional documentation considered by the Board related to the applicant's criminal history; (4) the Board's notice reflecting its decision on reconsideration; and (5) any other documents or written evidence considered by the Board pertaining to the decision complained of on appeal. The Board shall provide a copy of any of the above items (1)-(5) to an appellant upon request, and may charge costs for such copies as set forth in Rule 12.7 of the Rules of Judicial Administration.

(3) The special committee shall consider the appeal under an abuse of discretion standard for all issues except those involving pure questions of law, for which the standard of review shall be de novo. Under either standard, the burden is on the appellant to establish that the Board's decision was erroneous.

(4) Absent approval by the special committee, submission of materials other than those described under Rule 14.7(b)(1)-(2) is prohibited. The special committee may, in its sole discretion, allow a process server to submit additional written materials relating to the appeal. Otherwise, only the written materials described under Rule 14.7(b)(1)-(2) will be considered. A request to submit additional materials must clearly identify the additional materials for which inclusion is requested.

(5) The special committee may consider the appeal without a hearing, and may conduct its deliberations by any appropriate means. The special committee may, in its sole discretion, conduct a hearing and allow testimony from the affected process server or any other person with knowledge of the underlying facts relating to the application or the disciplinary action complained of.

(6) After consideration of the appeal, the special committee shall notify the Board and the process server in writing of its decision either affirming or reversing the Board's decision. No rehearing or further appeal shall be allowed.

TRD-200700972
Jody Hughes
Rules Attorney
Supreme Court of Texas
Filed: March 13, 2007

◆ ◆ ◆
Final Approval of Amendments to Texas Parental Notification Rules and Forms for Use in Proceedings Under Chapter 33 of the Family Code

Misc. Docket No. 07-9035

ORDERED that:

1. The Texas Parental Notification Rules, adopted by Order of Misc. Docket No. 99-9247 (Dec. 22, 1999) and amended by Order of Misc. Docket No. 00-9171 (Nov. 8, 2000), are revised by amending the Explanatory Statement that prefaces the Rules, and Rules 1.1, 1.3(c), 1.10, 2.2(f), 2.3(a), and 2.4(d), as follows.

2. The Texas Parental Notification Forms, adopted by Order of Misc. Docket No. 99-9243 (Dec. 15, 1999) and amended by Order of Misc. Docket No. 00-9171 (Nov. 8, 2000), are revised by adding Forms 2I and 2J as follows.

3. As ordered in Misc. Docket No. 06-9143, these changes take effect March 1, 2007.

4. The Clerk is directed to:

- a. post a copy of this Order on the Court's Internet website at www.courts.state.tx.us
- b. file a copy of this Order with the Secretary of State;
- c. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- d. send a copy of this Order to each member of the Legislature; and
- e. submit a copy of the Order for publication in the *Texas Register*.

SIGNED AND ENTERED this 27th day of February, 2007.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Harriet O'Neill, Justice

Scott Brister, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Explanatory Statement

Chapter 33 of the Texas Family Code, adopted by Act of May 25, 1999, 76th Leg., R.S., ch. 395, 1999 Tex. Gen. Laws 2466 (S.B. 30), provides for judicial authorization of an unemancipated minor to consent to an abortion in Texas without notice to her parents, managing conservator, or guardian. Section 2 of the Act states: "The Supreme Court of Texas shall issue promptly such rules as may be necessary in order that the process established by Sections 33.003 and 33.004, Family Code, as added by this Act, may be conducted in a manner that will ensure confidentiality and sufficient precedence over all other pending matters to ensure promptness of disposition." *See also* Tex. Fam. Code §§33.003(l), 33.004(c). Section 6 of the Act adds: "The clerk of the Supreme Court of Texas shall adopt the application form and notice of appeal form to be used under Sections 33.003 and 33.004, Family Code, as added by this Act, not later than December 15, 1999." *See also* Tex. Fam. Code §§33.003(m), 33.004(d).

The following rules and forms are promulgated as directed by the Act without any determination that the Act or any part of it comports with the United States Constitution or the Texas Constitution. During the public hearings and debates on the rules and forms, questions were raised concerning the constitutionality of Chapter 33, among which were whether the statute can make court rulings secret, and whether the statute can require courts to act within the specified, short dead-

lines it imposes. Because such issues should not be resolved outside an adversarial proceeding with full briefing and argument, the rules and forms merely track statutory requirements of the Legislature. Adoption of these rules does not, of course, imply that abortion is or is not permitted in any specific situation. *See, e.g., Roe v. Wade*, 410 U.S. 113 (1973); Tex. Rev. Civ. Stat. Ann. art. 4495b, §4.011 (restrictions on third trimester abortions of viable fetuses).

In 2005, the Legislature amended the Texas Occupations Code to prohibit a physician from performing an abortion on an unemancipated minor

without the written consent of the child's parent, managing conservator, or legal guardian or without a court order, as provided by Section 33.003 or 33.004, Family Code, authorizing the minor to consent to the abortion, unless the physician concludes that on the basis of the physician's good faith clinical judgment, a condition exists that complicates the medical condition of the pregnant minor and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial impairment of a major bodily function and that there is insufficient time to obtain the consent of the child's parent, managing conservator, or legal guardian.

Act of May 27, 2005, 79th Leg., R.S., ch. 269, §1.42, 2005 Tex. Gen. Laws 734 (S.B. 419) (codified at Tex. Occ. Code §164.052(a)(19)). The parental consent law does not direct the Supreme Court to provide procedural rules implementing its provisions but instead expressly references the judicial bypass provisions in the parental notification law as providing an exception to the parental consent requirement. The procedures governing application for a judicial bypass to the parental notification requirement are set forth in the existing Parental Notification Rules. In addition, the parental consent law requires the Texas Medical Board to adopt the forms necessary for physicians to obtain the consent required by law to perform an abortion upon an unemancipated minor. *See id.* (codified at Tex. Occ. Code §164.052(c)). Those forms are published at 22 Tex. Admin. Code §165.6(f) and are available on the Texas Medical Board's website, at www.tmb.state.tx.us/rules/docs/Current%20Rules%20-%20201-4-07.doc.

The notes and comments appended to the rules are intended to inform their construction and application by courts and practitioners.

1.1 Applicability of These Rules. These rules govern proceedings for obtaining a court order authorizing a minor to consent to an abortion without notice to either of her parents or a managing conservator or guardian under Chapter 33, Family Code (or as amended). All references in these rules to "minor" refer to the minor applicant. Other Texas court rules—including the Rules of Civil Procedure, Rules of Evidence, Rules of Appellate Procedure, Rules of Judicial Administration, and local rules approved by the Supreme Court—also apply, but when the application of another rule would be inconsistent with the general framework or policy of Chapter 33, Family Code, or these rules, these rules control.

1.3 Anonymity of Minor Protected.

(c) Notice Required to Minor's Attorney. With the exception of orders and rulings released under Rule 1.4(b), all service and communications from the court to the minor must be directed to the minor's attorney with a copy to the guardian ad litem. A minor's attorney must serve on the guardian ad litem instantly a copy of any document filed with the court. A guardian ad litem must serve on a minor's attorney instantly a copy of any document filed with the court. ~~This~~ These requirements take effect when an attorney appears for the minor, or when the clerk has notified the minor of the appointment of an attorney or guardian ad litem.

1.10 Amicus Briefs. Amicus briefs may be submitted and received by a court—but not filed—under either of the following procedures.

(a) Confidential, Case-Specific Briefs. A non-party who is authorized to attend or participate in a particular proceeding under Chapter 33, Family Code may submit an amicus brief addressing matters, including confidential matters, specific to the proceeding. The brief and the manner in which it is submitted must comply with Rules 1.3 and 1.4 and be directed to the court in which the proceeding is pending. The person must submit the original brief and the same number of copies required for other submissions to the court, and must serve a copy of the brief on the minor's attorney and guardian ad litem. The court to which the brief is submitted must maintain the brief as part of the confidential case file in accordance with Rule 1.4.

(b) Public or General Briefs. Any person may submit a brief addressing any matter relating to proceedings under Chapter 33, Family Code. Such a brief must not contain any information in violation of Rules 1.3 and 1.4. The person must submit the original brief and the same number of copies required for other submissions to the court. If the brief is submitted to a court of appeals, the original and eleven copies of the brief, plus a computer disk containing an electronic copy of the brief, must also be submitted to the Supreme Court of Texas. When an appeal of a proceeding is filed, the clerk of the court of appeals or the Supreme Court must notify the parties to the appeal ~~minor's attorney and guardian ad litem~~ of the existence of any brief filed ~~submitted~~ under this subsection and must make the brief available for inspection and copying. Upon ~~submission~~ receipt of an electronic copy of an amicus brief submitted under this subsection, the Clerk of the Supreme Court must, as soon as practicable, have the brief posted on the Texas Judiciary Internet site and make it available to the public for inspection and copying.

2.2 Clerk's Duties.

(f) Orders. The clerk must provide the minor's ~~and the attorney and the guardian ad litem~~ with copies of all court orders, including findings of fact and conclusions of law.

2.3 Court's Duties. Upon receipt of an application from the clerk, the court must promptly:

(a) appoint a qualified person to serve as guardian ad litem for the minor applicant;

2.4 Hearing.

(d) Record. ~~If the minor appeals, or if there is evidence of past or potential abuse of the minor, the hearing must be transcribed instantly. The court, the minor's attorney, or the guardian ad litem may request that the record--the clerk's record and reporter's record--be prepared. A request by the minor's attorney or guardian ad litem must be in writing and may be, but is not required to be, on Form 2I (if an appeal will be taken) or 2J (if an appeal will not be taken). The court reporter must provide an original and two copies of the reporter's record to the clerk. When the record has been prepared, the clerk must contact the minor's attorney and the guardian ad litem at the telephone numbers shown on Form 2I or 2J and make it available to them. The record must be prepared and made available instantly if it has been requested for appeal or if a belief that there is evidence of past or potential abuse of the minor is stated on the record or submitted to the court in writing. When a notice of appeal is filed, the clerk must forward the record to the court of appeals in accordance with Rule 3.2(b).~~

Form 2I: NOTICE TO CLERK AND COURT REPORTER TO PREPARE RECORDS

CAUSE NO. _____

IN RE JANE DOE:

This matter was heard on the _____ day of _____, _____. The Court has issued a final judgment. **Jane Doe may desire to appeal.** Jane Doe requests the court reporter and appropriate clerk to prepare instant a record of the trial proceedings and make it available to:

(Name and address of guardian ad litem)

(Name and address of minor's attorney)

Immediately upon completion of the record, the clerk must contact both the undersigned attorney and the guardian ad litem at the following telephone numbers to advise that the record is available:

(Telephone number for guardian ad litem)

(Telephone number for minor's attorney)

A copy of this notice has been given to both the appropriate clerk and court reporter and no additional request for the record of the trial proceedings is required. The filing of this document with the clerk constitutes proof that written request for preparation of the trial record was made.

Signed the _____ day of _____, _____ at _____ [time] a.m./p.m [circle one]

ATTORNEY

GUARDIAN AD LITEM

Caution: no officials or court personnel involved in the proceedings may ever disclose to anyone outside the proceedings--including the minor's parent, managing conservator, or legal guardian--that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion, except as permitted by law.

Form 2J: NOTICE TO CLERK AND COURT REPORTER TO PREPARE RECORDS

CAUSE NO. _____

IN RE JANE DOE:

This matter was heard on the _____ day of _____, _____. The Court has issued a final judgment and **no appeal will be taken**. Jane Doe's attorney/guardian ad litem requests the court reporter and appropriate clerk to prepare a record of the trial proceedings and make it available to:

(Name and address of guardian ad litem)

(Name and address of minor's attorney)

Upon completion of the record, the clerk must contact both the undersigned attorney and the guardian ad litem at the following telephone numbers to advise that the record is available:

(Telephone number for guardian ad litem)

(Telephone number for minor's attorney)

A copy of this notice has been given to both the appropriate clerk and court reporter and no additional request for the record of the trial proceedings is required. The filing of this document with the clerk constitutes proof that written request for preparation of the trial record was made.

Signed the _____ day of _____, _____ at _____ [time] a.m./p.m [circle one]

ATTORNEY

GUARDIAN AD LITEM

Caution: no officials or court personnel involved in the proceedings may ever disclose to anyone outside the proceedings--including the minor's parent, managing conservator, or legal guardian--that the minor is or has ever been pregnant, or that she wants or has ever wanted an abortion, except as permitted by law.

TRD-200700971
Jody Hughes
Rules Attorney
Supreme Court of Texas
Filed: March 13, 2007

Interim Procedures Governing Video Recording and
Webcasting of Proceedings Before the Supreme Court of Texas
Misc. Docket No. 07-9033
ORDERED that:

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To test whether and how a video recording of proceedings before the Supreme Court of Texas should be produced and made available on the Internet, the following interim procedures are adopted:

1. *All Proceedings to be Recorded.* Except as ordered by the Court on motion as provided herein or on its own initiative, a video recording of all oral arguments and other public proceedings of the Supreme Court of Texas will be produced and made available on the Internet at the website of the Saint Mary's University School of Law, <http://www.stmarytx.edu/law/>, linked through the Court's website, <http://www.supreme.courts.state.tx.us/>, as technical operations allow.

2. *Motion for Exemption.* A party or other interested person may move the Court to exempt a particular proceeding from video recording or webcasting. The motion must be filed at least ten days before the scheduled date of the proceeding and served on all parties. The motion must state the scheduled date and time of the proceeding and otherwise comply with Rule 10.1 of the Texas Rules of Appellate Procedure.

3. *Response.* Any party or interested person may file a response to the motion. The response must be filed at least three days before the scheduled date of the proceeding and served on the movant and all parties.

4. *Court May Shorten Times.* The Court may, for good cause, shorten the time for filing a motion or response.

5. *Options If Motion Granted.* If the Court grants the motion, it may withhold or delay webcasting, produce only an audio recording, produce no recording, or take other appropriate measures to protect the parties' rights, preserve the dignity of the court, and ensure the orderly conduct of the proceedings.

6. *Other Recording and Broadcasting.* A person may request to record or broadcast a proceeding in accordance with Rule 14 of the Texas Rules of Appellate Procedure. Existing video, audio, and lighting systems should be used unless otherwise ordered by the Court.

The Clerk is directed to post a copy of this Order on the Court's internet website at www.courts.state.tx.us, cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*, and submit a copy of the Order for publication in the *Texas Register*.

SIGNED AND ENTERED this 27th day of February, 2007.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Harriet O'Neill, Justice

Scott Brister, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

TRD-200700970

Jody Hughes
Rules Attorney
Supreme Court of Texas
Filed: March 13, 2007



Order Amending Texas Rules of Disciplinary Procedure

Misc. Docket No. 06-9168

ORDERED that:

1. The following amendments to the Texas Rules of Disciplinary Procedure are hereby adopted by the Court.

2. These changes, with any modifications made after public comments are received, take effect March 31, 2007. Comments may be submitted to the Court in writing on or before March 1, 2007, and should be directed to: Jody Hughes, Rules Attorney, P.O. Box 12248, Austin TX 78711, or may be emailed to him at jody.hughes@courts.state.tx.us.

3. The Clerk is directed to:

a. file a copy of this Order with the Secretary of State;

b. cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;

c. send a copy of this Order to each elected member of the Legislature; and

d. cause a copy of this Order to be posted on the website of the Supreme Court of Texas at <http://www.supreme.courts.state.tx.us>.

In Chambers, this 18th day of December, 2006.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Harriet O'Neill, Justice

J. Dale Wainwright, Justice

Scott Brister, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Amendments to the Texas Rules of Disciplinary Procedure

* * *

Part II. The District Grievance Committees

* * *

2.03 Time for Appointment and Terms

All persons serving on a Committee at the time these rules become effective shall continue to serve for their then unexpired terms, subject to resignation or removal as herein provided. Nominations to Committees shall be made annually at the spring meeting of the Board; all appointments shall be made by the President no later than June 1 of each year, provided, however, that if a vacancy on a Committee arises after June 1, the Director(s) shall nominate and the President shall appoint an eligible person to serve for the remaining period of the unexpired term. If any Director fails or refuses to make nominations in a timely manner, or the President fails or refuses to make appointments in a timely manner, the existing members of the Committees shall continue to hold office until the nominations and appointments are made and the successor member is qualified. One-third of each new Committee will be appointed for initial terms of one year, one-third for an initial term of two years, and one-third for an initial term of three years. Thereafter, all terms will be for a period of three years, except for appointments to fill unexpired terms, which will be for the remaining period of the unexpired term. Any member of a Committee who has served two consecutive terms, whether full or partial terms, is not eligible for reappointment until at least three years have passed since his or her last prior service. No member may serve as chair for more than two consecutive terms of one year each. All members are eligible for election to the position of chair.

Part XIII. Cessation of Practice

13.01 Notice of Attorney's Cessation of Practice

When an attorney licensed to practice law in Texas dies, resigns, becomes inactive, is disbarred, or is suspended, leaving an active client matter for which no other attorney licensed to practice in Texas, with the consent of the client, has agreed to assume responsibility, written notice of such cessation of practice ~~(together with information identifying the matter)~~ shall be mailed to all those clients, former clients, opposing counsel, courts, agencies with which the attorney has matters pending, malpractice insurers, and any other person or entity having reason to be informed of the cessation of practice. If the attorney has died dies, or has a mental or emotional disability, the notice shall may be given by the personal representative of the estate of the attorney or by any person having lawful custody of the files and records of the attorney, including those persons who have been employed by the deceased attorney. In all other cases, notice shall be given by the attorney, a person authorized by the attorney, a person having lawful custody of the files of the attorney, or by Chief Disciplinary Counsel. If the client has consented to the assumption of responsibility for the matter by another attorney licensed to practice law in Texas, then the above notification requirements are not necessary and no further action is required.

13.02 Assumption of Jurisdiction

A client of the attorney, Chief Disciplinary Counsel, or any other interested person may petition a district court in the county of the attorney's residence to assume jurisdiction over the attorney's law practice. If the attorney has died, such petition may be filed in a statutory probate court. The petition must be verified and must state the facts necessary to show cause to believe that notice of cessation is required under this part. It must state the following:

A. That an attorney licensed to practice law in Texas has died, disappeared, resigned, become inactive, been disbarred or suspended, or become physically, mentally or emotionally disabled and cannot provide legal services necessary to protect the interests of clients.

B. That cause exists to believe that court supervision is necessary because the attorney has left client matters for which no other attorney

licensed to practice law in Texas has, with the consent of the client, agreed to assume responsibility.

C. That there is cause to believe that the interests of one or more clients of the attorney or one or more interested persons or entities will be prejudiced if these proceedings are not maintained.

13.03 Hearing and Order on Application to Assume Jurisdiction

The court shall set the petition for hearing and may issue an order to show cause, directing the attorney or his or her personal representative, or if none exists, the person having custody of the attorney's files, to show cause why the court should not assume jurisdiction of the attorney's law practice. If the court finds that one or more of the events stated in Rule 13.02 has occurred and that the supervision of the court is required, the court shall assume jurisdiction and appoint one or more attorneys licensed to practice law in Texas ~~do one or more of the following as specified in the court's written order to take such action as set out in the written order of the court including, but not limited to,~~ one or more of the following:

* * *

TRD-200700974

Jody Hughes

Rules Attorney

Supreme Court of Texas

Filed: March 13, 2007

◆ ◆ ◆

Order Approving Amendments to State Bar Rules (Articles I, II, and IV)

Misc. Docket No. 06-9167

It is **ORDERED** that:

1. The following amendments to the State Bar Rules, which were approved by the State Bar Board at a regularly called and posted meeting on June 22, 2005, are hereby approved by the Court.

2. These changes, with any modifications made after public comments are received, take effect March 31, 2007. Comments may be submitted to the Court in writing on or before March 1, 2007, and should be directed to: Jody Hughes, Rules Attorney, P.O. Box 12248, Austin TX 78711, or may be emailed to him at jody.hughes@courts.state.tx.us.

3. The Clerk is directed to:

- file a copy of this Order with the Secretary of State;
- cause a copy of this Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
- send a copy of this Order to each elected member of the Legislature; and
- cause a copy of this Order to be posted on the website of the Supreme Court of Texas at <http://www.supreme.courts.state.tx.us>.

In Chambers, this 18th day of December, 2006.

Wallace B. Jefferson, Chief Justice

Nathan L. Hecht, Justice

Harriet O'Neill, Justice

J. Dale Wainwright, Justice

Scott Brister, Justice

David M. Medina, Justice

Paul W. Green, Justice

Phil Johnson, Justice

Don R. Willett, Justice

Article I--Definitions

...

4. "Act" means the State Bar Act, Chapter 510, Acts of the 66th Legislature of Texas, Regular Session, 1979, being also Senate Bill No. 287 as passed by the 66th Legislature of Texas, Regular Session, 1979, and signed by the Governor on June 11, 1979, currently codified at Title 2, Subtitle G, Chapter 81 of the Texas Government Code and being also Article 320a-1, Vernon's Texas Civil Statutes as revised and as it may be amended.

Article II--General Provisions

...

Section 14. Procedures for Meetings

(A) All proceedings at meetings of the State Bar, of the board, of the executive committee and of all other committees and sections shall be governed by the most recent edition of Robert's Rules of Order Newly Revised.

...

Article IV--Administration

Section 1. Board of Directors; Duties

(A) The State Bar shall be governed by a board which shall enforce the Act and these Rules.

(B) The term of office for each elected, and public, and minority director shall be three (3) years. The terms of such elected and public directors shall be staggered with one-third (1/3) of such directors elected or appointed each year. The terms of minority directors shall be staggered with as near to one-third (1/3) as possible appointed each year.

(C) The regular term of office of an elected, or public, or minority director shall commence on adjournment of the annual meeting of the State Bar next following election or appointment and continue until the adjournment of the third annual meeting next following election or appointment.

...

Section 3. Composition of the Board

The board shall be composed of the officers of the State Bar, the president, president-elect, and immediate past president of the Texas Young Lawyers Association, not more than thirty (30) members of the State Bar elected by the membership from their district as may be determined by the board, six (6) persons who are not licensed attorneys, known as public directors, who do not have, other than as consumers, a financial interest in the practice of law, and four (4) minority directors appointed

by the president and confirmed by the Board. The Board may, in its discretion, also include other members who shall be non-voting board members.

...

Section 5. Qualification of Officers and Directors

(A) No person may serve as an officer or director who,

...

(5) ... as to an elected director, has his principal place of practice in the same county as the last preceding director from that district, except for an elected director in a Metropolitan County or in El Paso County, and except as necessary to achieve a rebalancing of the sizes of the Board classes in accordance with the provisions of Art. IV, §8(C).

...

(8) ... as to a director, fails to attend without good cause; any two (2) consecutive regular meetings of the board or any four (4) meetings of the board is absent from more than half of the regularly scheduled board meetings that the director is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

...

(11) ... as to a director or a director's spouse, is an officer, employee, or paid consultant of a Texas trade association in the field of board interest as defined in State Bar Act §81.028.

...

(C) The board shall provide a training program for board members that meets the requirements of §81.0201 of the State Bar Act. No person who is elected or appointed to and qualifies for office as a member of the board of directors may vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with the requirements of §81.0201 of the State Bar Act.

...

Section 8. Director Vacancies and How Filled

(A) Death of a board member, judgment of incompetency, a board member's resignation or any failure to qualify shall create a vacancy. In case of a vacancy in as to an elected directorship, the president, shall appoint a member whose principal place of practice is within the district within which the vacancy has occurred to serve until the next annual election of directors. Vacancies in ex officio directorships shall be filled by the person who succeeds to the office in the State Bar or in the Texas Young Lawyers Association to which such directorship is incident, except that the directorship incident to the office of immediate past president of the State Bar or Texas Young Lawyers Association or immediate past chairperson of the board of the State Bar shall be filled by the most recent holder of such offices respectively who is willing to serve. Vacancies in public and minority directorships shall be filled in the same manner and by the same authority designated by statute to fill such positions.

(B) Persons filling such vacancies shall meet the same requirements and shall qualify in the same manner as those assuming the office of director for the full term. A person succeeding to an ex officio or public director vacancy shall serve the balance of the term of the particular directorship vacated.

(C) The board may adopt appropriate procedures for the purpose of equalizing the size of the classes of the board of directors. Once such equalization is accomplished, then those appointed to fill a vacancy shall serve the balance of the term of the particular position vacated.

(D) The board of directors may remove a director from the board at any regular meeting by resolution declaring the director's position vacant, pursuant to §81.027(a) of the State Bar Act or Article IV, §5 of these Rules.

Section 9. Executive Committee

(A) The executive committee of the board shall consist of the president, president-elect, the chairperson of the board, the immediate past president of the State Bar, president of the Texas Young Lawyers Association and such other persons as the board president may designate appoint. The president shall be chairperson, and the board chairperson shall be the vice-chairperson of the executive committee and he shall preside in the chairperson's absence.

TRD-200700973

Jody Hughes

Rules Attorney

Supreme Court of Texas

Filed: March 13, 2007



Texas Department of Transportation

Public Notice - Creation of Specialty License Plates

Under Title 43, Texas Administrative Code, §17.28(i)(1)(D), the Texas Department of Transportation is required to publish notice of all tentatively approved specialty license plates for public comment. The department will accept comments on these specialty license plates until April 2, 2007.

The specialty license plate tentatively approved and open for comment is: Adopt-A-Beach. This plate will be available to the general public and will not have qualifying restrictions. The license plate image may be viewed at: www.txdot.gov, keyword: **plate vote**. All comments will be considered prior to the final decision.

Please e-mail comments to cflores@dot.state.tx.us or write to Christina Flores, Texas Department of Transportation, Vehicle Titles and Registration Division, 4000 Jackson Avenue, Austin, Texas 78779-0001. For more information go to www.txdot.gov.

TRD-200701004

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: March 14, 2007



University of Houston System

Notice of Request for Proposal

In compliance with Chapter 2254, Texas Government Code, the University of Houston System for and in behalf of the University of Houston-Victoria, furnishes this notice of Request for Proposal. The University of Houston-Victoria (UHV) is seeking to hire a marketing consultant to recommend organizational structure for optimal operation of the communications, marketing and web functions; to assist the university in developing, implementing, and conducting ongoing evaluation of an integrated marketing and communication plan; to help develop a marketing campaign for UHV's new athletic program consistent with university goals. This advice and consultation is authorized and supported by the UHV President as being of substantial need and necessary in performing the needed evaluation.

UHV's preference is to have an organizational structure recommendation by July 1, 2007. The consultant will work closely with key UHV

personnel to develop marketing plans which promote the university's image and brand (both traditional and electronic); increase enrollment; support development efforts; and roll out athletics, with continued assessment and adjustment as deemed necessary for the remaining term of the contract.

The term of this contract is to be for one year period beginning on or about May 1, 2007, and ending April 30, 2008, and subject to a one (1) year renewal at the option of the University. Further assistance can be obtained from Lydia Huber, Purchasing Agent at (361) 570-4823, email huberl@uhv.edu. All proposals must be specific and responsive to the criteria set forth in this request. Successful Proposer will be required to execute a UHV Consulting Agreement.

SCOPE OF WORK: The consultant will be expected to have in place at the conclusion of this project the following: (A) Evaluate the university's current organizational structure with respect to marketing, communication, web and, if possible, information management, and make recommendations regarding a flexible, effective structure, with consideration of reporting structure, staffing needs, committee participation, and budget. The recommended structure should address UHV's priorities of increasing enrollment and financial support. (B) Assist key personnel in marketing UHV's nascent athletic programs, and in developing a long-term marketing plan for athletics which complements UHV's overall mission and vision. (C) Assist key personnel in developing, implementing, and evaluating an integrated marketing communication plan to promote the university's image with diverse constituents in multiple markets in order to increase enrollment and financial support of the institution. (D) Assist key personnel in developing a web strategy which supports a cohesive university image consistent with the integrated marketing communication plan; offers students a user-friendly interface with university resources; respects the unique identities of individual schools and programs; simplifies web management; and effectively communicates with all constituents.

INFORMATION ABOUT THE UNIVERSITY OF HOUSTON-VICTORIA: The University of Houston-Victoria is an upper-level and graduate institution with selected bachelor's and master's degree programs in arts and sciences, business administration, and education. Although the University primarily serves commuting students from Victoria and surrounding counties, UHV also offers degree programs, in collaboration with other UH System institutions, at off-campus centers at Sugar Land and Cinco Ranch in Fort Bend County, and offers courses at a number of other off-campus sites in the region. The current student enrollment is approximately 2,600 students. Of the 2,600 students about 40% of them are from Victoria and the thirteen surrounding counties; about 49% are from Fort Bend and Harris County, 9% from all other counties in Texas and the remaining 2% are either out of state or foreign students.

DEADLINE FOR PROPOSALS: Submit one original and three (3) copies of your proposal in a sealed envelope to: Purchasing Office, University of Houston-Victoria, 3007 North Ben Wilson, University West, Room 107D, Victoria, Texas 77901 before 3:00 PM CST on April 23, 2007. The original shall be prepared on a word processor and shall be of good, readable quality.

COMPLIANCE WITH RFP REQUIREMENTS: By submission of a Proposal, a Proposer agrees to be bound by the requirements set forth in this RFP. UHV, at its sole discretion, may disqualify a Proposal from consideration, if it determines a Proposal is non-responsive, incomplete, not properly certified and signed, not readable or otherwise non-compliant in whole or in part, with the requirements set forth in this RFP.

SIGNATURE, CERTIFICATION OF PROPOSER: The Proposal must be signed and dated by a representative of the Proposer who is autho-

rized to bind the Proposer to the terms and conditions contained in this RFP and to compliance with the information submitted in the proposal. Each Proposer submitting a Proposal certifies to both (i) the completeness, veracity, and accuracy of the information provided in the proposal and (ii) the authority of the individual whose signature appears on the Proposal to bind the Proposer to the terms and conditions set forth in this RFP. Proposals submitted without the required signature shall be disqualified.

USE, DISCLOSURE OF INFORMATION: Proposers acknowledge that UHV is an agency of the State of Texas and is, therefore, required to comply with the Texas Public Information Act. If a Proposal includes propriety data, trade secrets, or information that Proposer wishes to except from public disclosure, then the Proposer must specifically and clearly label each section or page of such data, secrets, or information as follows: "PRIVILEGED AND CONFIDENTIAL-PROPRIETARY INFORMATION". To the extent permitted by law, information labeled by the Proposer as proprietary will be used by UHV only for purposes related to or arising out of the (i) evaluation of Proposals, (ii) selection of a Proposer pursuant to the RFP process, and (iii) negotiation and execution of a Contract, if any, with the Proposer selected.

RECESSION OF PROPOSAL: A Proposal can be withdrawn from consideration at any time prior to expiration of the Deadline for Proposals by sending a written or email request to the Purchasing Office.

REQUEST FOR CLARIFICATION: UHV reserves the right to request clarification of any information contained in a Proposal and to ask for and consider any additional information deemed beneficial in evaluation of the Proposals.

ADDENDA TO THE RFP: Addenda, if any, will be posted to the Texas Register. If necessary, as determined by UHV, Proposers will be allowed time to revise and supply additional information in response to such addenda.

EVALUATION OF PROPOSALS: The Proposals will be reviewed in accordance with the criteria set forth in this RFP. Each Proposer must provide current, accurate, complete information about all of the following in support of its Proposal (please provide your response in the format below): (A) Business, Financial information (i) Name, address, telephone number and title of the person(s) whom UHV can contact about the proposal; (ii) Provide an overview of your firm, including whether you would be considered a local, regional, or national firm and the demographics of your client base; (iii) Provide the total number of personnel employed by your firm; (iv) State of Texas Historically Underutilized Business (HUB) status or other minority certification, if any; (v) Billing frequency proposed. (B) Services and Consulting Methodology: (i) Description of Services the Proposer is able to provide; (ii) Describe in sufficient detail the methodology you will employ and tasks you will perform to achieve the goals of the project as set forth in this RFP; (C) Experience: (i) Describe your firm's experience as a marketing consultant for organizations of similar size, structure, and scope of work required. Successful examples of your innovations, strategies or ideas should be included. (ii) Length of time and years during which the Proposer has provided the type of services contemplated by this RFP; (iii) Provide name, title, telephone number and resume of each person who will be assigned to our account; (iv) Disclose if you intend to subcontract any service and if so, identify the service and vendor. (D) References: Provide a list of three clients, preferably colleges/universities, for whom the Proposer has provided Marketing Consultant services within the last three years, including name of firm, contact person's name, title, address, telephone number, and brief scope of project; (E) Performance Timetable: Indicate the number of hours that you believe is necessary and appropriate for your firm to complete each of the tasks described in the Scope of Work. Also indicate the number of meetings with the UHV Personnel and method

of contact (i.e.: telephone, on-site face-to-face, ITV). Recommended time should be identified for each role identified in this RFP and totaled for all aspects of the project. The University envisions an initial meeting between UHV Personnel and the Successful Proposer; interim contact, as necessary; and a final on-site meeting for delivery and presentation of the final written report. (F) Fees: Provide a fee schedule for the consulting services you will provide. Identify by type and amount any reimbursable expenses over and above the quoted consulting fee.

DISCUSSIONS WITH PROPOSERS: In its evaluation, UHV may conduct discussions and/or negotiations with any Proposer that appears to be eligible for award ("Eligible Proposer") pursuant to the selection criteria set forth in this RFP.

MODIFICATION OF PROPOSALS: All Eligible Proposals will be afforded the opportunity to submit best and final Proposals if (a) negotiations with any other Proposer result in material alteration of the RFP and (b) such material alteration has a cost consequence that could alter the Proposer's quotations regarding rates for services.

SELECTION AND EVALUATION OF PROPOSER: The Proposer selected will be determined in accordance with the evaluation criteria set forth in this RFP, to be most advantageous to UHV. Proposers acknowledge that UHV is not bound to accept the lowest-priced Proposal and that is subjective judgments must be made in regard to the evaluation process.

CRITERIA FOR EVALUATION: Evaluation of Proposals and award to the Selected Proposer will be based on the following factors, as weighted and listed as follows: (i) Demonstrated ability of the Proposer to meet all the requirements of this RFP as described in the Scope of Work (50%); (ii) Qualifications: References, experience and demonstrated management experience (30%); (iii) Fee Schedule: Rate for Services quoted (20%)

TERMINATION: This RFP in no manner obligates UHV to the eventual purchase of any consulting services described, implied or which may be proposed until confirmed by a written consultant contract. Progress towards this end is solely at the discretion of UHV and may be terminated without penalty or obligation at any time prior to the signing of a contract. UHV reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals.

TRD-200701018

Brian S. Nelson

Executive Director and Associate General Counsel

University of Houston System

Filed: March 14, 2007

The University of Texas System

Award of Consultant Contract Notification

The University of Texas System Administration ("University"), in accordance with the provisions of *Texas Government Code*, Chapter 2254, entered into a contract for consulting services (the "Contract") with Strategic Management Systems, Inc. ("Consultant") as more particularly described in the invitation to consultants to provide offers of consulting services (the "Invitation"), published in the December 1, 2006, issue of the *Texas Register* (31 TexReg 9769).

Project Description:

In accordance with the Invitation and Consultant's response thereto, Consultant shall conduct evaluations of the compliance functions at each of the institutions of the U.T. System.

Name and Address of Consultant:

Strategic Management Systems, Inc.; 5911 Kingstowne Village Parkway, Suite 210; Alexandria, Virginia 22315

Total Value of the Contract:

\$775,000

Contract Dates:

The Contract was executed by Consultant on February 27, 2007 and by University on March 6, 2007, and dated effective February 26, 2007.

Due Dates for Contract Products:

Each evaluation shall be concluded 90 days after initiation of the review.

The term of the Contract shall terminate on December 31, 2010.

TRD-200700962

Francie A. Frederick

General Counsel to the Board of Regents

The University of Texas System

Filed: March 13, 2007

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April - December 2007 Publication Schedule

Filing deadlines for publication in the *Texas Register* are 12 noon Monday for rules and 12 noon Wednesday for miscellaneous documents, rule review notices, and other documents. These deadlines are for publication. ***They are not related to posting requirements for open meeting notices.*** Because of printing and mailing schedules, documents received after the deadline for an issue cannot be published until the next issue. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

Issue date	Rules: 12 Noon	Other Documents: 12 Noon
14 Friday, April 6	Monday, March 26	Wednesday, March 28
15 Friday, April 13 <i>First Quarterly Index</i>	Monday, April 2	Wednesday, April 4
16 Friday, April 20	Monday, April 9	Wednesday, April 11
17 Friday, April 27	Monday, April 16	Wednesday, April 18
18 Friday, May 4	Monday, April 23	Wednesday, April 25
19 Friday, May 11	Monday, April 30	Wednesday, May 2
20 Friday, May 18	Monday, May 7	Wednesday, May 9
21 Friday, May 25	Monday, May 14	Wednesday, May 16
22 Friday, June 1	Monday, May 21	Wednesday, May 23
23 Friday, June 8	*Friday, May 25	Wednesday, May 30
24 Friday, June 15	Monday, June 4	Wednesday, June 6
25 Friday, June 22	Monday, June 11	Wednesday, June 13
26 Friday, June 29	Monday, June 18	Wednesday, June 20
27 Friday, July 6 <i>Second Quarterly Index</i>	Monday, June 25	Wednesday, June 27
28 Friday, July 13	Monday, July 2	*Monday, July 2
29 Friday, July 20	Monday, July 9	Wednesday, July 11
30 Friday, July 27	Monday, July 16	Wednesday, July 18
31 Friday, August 3	Monday, July 23	Wednesday, July 25
32 Friday, August 10	Monday, July 30	Wednesday, August 1

33 Friday, August 17	Monday, August 6	Wednesday, August 8
34 Friday, August 24	Monday, August 13	Wednesday, August 15
35 Friday, August 31	Monday, August 20	Wednesday, August 22
36 Friday, September 7	Monday, August 27	Wednesday, August 29
37 Friday, September 14	<i>*Friday, August 31</i>	Wednesday, September 5
38 Friday, September 21	Monday, September 10	Wednesday, September 12
39 Friday, September 28	Monday, September 17	Wednesday, September 19
40 Friday, October 5 <i>Third Quarterly Index</i>	Monday, September 24	Wednesday, September 26
41 Friday, October 12	Monday, October 1	Wednesday, October 3
42 Friday, October 19	Monday, October 8	Wednesday, October 10
43 Friday, October 26	Monday, October 15	Wednesday, October 17
44 Friday, November 2	Monday, October 22	Wednesday, October 24
45 Friday, November 9	Monday, October 29	Wednesday, October 31
46 Friday, November 16	Monday, November 5	Wednesday, November 7
47 Friday, November 23	Monday, November 12	Wednesday, November 14
48 Friday, November 30	Monday, November 19	<i>*Monday, November 19</i>
49 Friday, December 7	Monday, November 26	Wednesday, November 28
50 Friday, December 14	Monday, December 3	Wednesday, December 5
51 Friday, December 21	Monday, December 10	Wednesday, December 12
52 Friday, December 28	Monday, December 17	Wednesday, December 19

How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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